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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1438th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 6 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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GE.01-40896 (E)

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The meeting was called to order at 10.15 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fifty-eighth session of the Committee on the Elimination of Racial Discrimination.

APPROVAL BY THE COMMITTEE OF THE EXPERTS APPOINTED BY TWO STATES PARTIES TO FILL THE VACANCIES RESULTING FROM THE RESIGNATION OF TWO MEMBERS OF THE COMMITTEE (item 1 of the provisional agenda) (CERD/C/391)

2. The CHAIRMAN paid tribute to several members of the Committee - Mr. Michael Banton, Mr. Peter Nobel, Ms. Deci Zou and Mr. Brun-Otto Bryde - who had resigned from the Committee since the previous session. In accordance with rule 13 of the Committee's rules of procedure, the People's Republic of China had appointed Mr. Tang Chengyuan to complete Ms. Deci Zou's mandate and the United Kingdom of Great Britain and Northern Ireland had appointed Mr. Patrick Thornberry to take over from Mr. Michael Banton. The Chairman recalled that by virtue of rule 58 of the Committee's rules of procedure, elections were held by secret ballot, unless the Committee decided otherwise in the event of elections for a post for which only one candidate had been proposed.

3. Mr. ABOUL-NASR, supported by Mr. RECHETOV, proposed that the appointment of Mr. Tang Chengyuan and Mr. Thornberry be approved without a secret ballot.

4. It was so decided.

5. In accordance with rule 14 of the rules of procedure, Mr. TANG Chengyuan and Mr. THORNBERRY, newly elected members of the Committee, made the following solemn declaration:

> "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously."

ADOPTION OF THE AGENDA (item 2 of the provisional agenda) (CERD/C/391)

6. Mr. SHAHI, referring to item 11 of the provisional agenda, asked how and when the Committee would consider the Committee's contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the report by Mr. Valencia Rodriguez on the subject.

7. The CHAIRMAN said that the date on which that important question would be examined would be indicated in the Committee's programme of work in due course.

8. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4)

Adoption of the programme of work (CERD/C/58/Misc.4/Rev.4) (document distributed in the meeting room, in English only)

9. Ms. McDOUGALL proposed deferring consideration of the agenda item on the World Conference against Racism and Racial Discrimination until the second week of the session so as to allow the Committee to take account of the conclusions of the inter-sessional open-ended working group, which was due to meet during the first week.

10. The CHAIRMAN, after endorsing Ms. McDougall's proposal, said it would also be useful if the Committee members who had taken part in the regional meetings held in preparation for the World Conference would report to the Committee. The dates for considering the conclusions of the inter-sessional open-ended working group and the reports of Committee members could be decided later by the Bureau, as appropriate.

11. Mr. ABOUL-NASR said that he had represented the Committee at a regional meeting of experts in Dakar (Senegal) as part of preparations for the World Conference against Racism. It would be useful if the report of that meeting, which contained the Committee's views as he had presented them to participants, could be distributed during the session before the Committee discussed its contribution to the World Conference.

12. The CHAIRMAN said that the conclusions of the regional meetings and seminars held in preparation for the World Conference would be considered under the relevant items of the programme of work and agenda.

13. The programme of work was adopted.

STATEMENT BY THE DEPUTY HIGH COMMISSIONER FOR HUMAN RIGHTS ON BEHALF OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

14. Mr. RAMCHARAN (Deputy High Commissioner for Human Rights) said that he would speak on behalf of the United Nations High Commissioner for Human Rights, Mrs. Robinson. The latter was currently taking part in the inter-sessional open-ended working group of the Preparatory Committee for the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was in charge of revising the draft declaration and programme of action to be approved by the Conference.

15. In her message to the Committee, the High Commissioner welcomed the two new Committee members, Mr. Thornberry (United Kingdom) and Mr. Tang Chengyuan (China), who were replacing Mr. Banton and Ms. Deci Zou following their resignation. She was sorry that Mr. Nobel had been compelled to resign for family reasons and congratulated Mr. Bryde, who had also left the Committee, following his appointment to the Federal Constitutional Court in Germany.

16. The Millennium Summit held in September 2000 and the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance provided a rare opportunity to galvanize political momentum towards the universal ratification of the International Convention on the Elimination of All Forms of Racial Discrimination. To date 157 States were party to the Convention and 33 had made the declaration under article 14 concerning the communications procedure. Much work nevertheless remained to be done.

17. The turn of the century opened up new possibilities in the fight against racism in its oldest and more contemporary manifestations. The problems of racism, racial discrimination and xenophobia seemed to have been compounded by globalization, which stretched the creative capacities and collective determination of the international community to respond. The World Conference had the potential to be among the most significant international gatherings of the new millennium and could embody the spirit of the century by establishing that all belonged to one human family.

18. The High Commissioner underlined the important contribution of Committee members, both in their personal capacity and on the Committee's behalf, in the various regional seminars and expert meetings held since the Committee's fifty-seventh session.

19. Concerning the Office of the High Commissioner for Human Rights, she recalled that she had recently launched an appeal for voluntary contributions for the year 2001 in order to finance a comprehensive two-year programme to improve servicing of the entire treaty monitoring system. In December 2000, the support teams for treaty bodies had been reorganized to allow for increased coordination and efficiency of servicing activities. One of the new teams would deal with individual complaints under the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the Convention against Torture. The team was currently reviewing its working methods and should assist the various expert bodies in the further development of a body of comparative jurisprudence.

20. With regard to prevention, including early warning measures and urgent action procedure, the High Commissioner recalled, as the Committee had repeatedly emphasized, that conflicts within and beyond borders were frequently characterized by a pattern of escalating racial, ethnic or xenophobic hatred or violence. As Secretary-General of the World Conference against Racism, she wished to see the Conference as an opportunity to promote the concept of preventive action both internationally and nationally. The political momentum for prevention had probably never been higher. In July 2000, the Security Council had invited the Secretary-General to submit an analytical report on the prevention of armed conflict, including recommendations on measures the United Nations could take in that respect, taking into account previous experience. In that regard the Security Council had spoken of the need to create a "culture of peace". In her view, human rights - and the fight against racism, racial discrimination, xenophobia and related forms of intolerance in particular - were central to the quest for a culture of peace and were indispensable elements of sustainable conflict prevention strategies. In that regard, she commended the Committee on its proposed recommendation to the World Conference to the effect that the criteria for early warning be refined and on its

recommendations concerning the educative measures that could be taken under article 7 of the Convention. The goal of prevention and the need to secure meaningful redress for victims would be well served by the Committee's recent procedural advancements under article 14 of the Convention. Much nevertheless remained to be done at the national and international levels to make the communications procedure under the Convention better known.

21. With regard to NGO activities, it was obvious that the States alone could not deliver sustainable human rights outcomes. The World Conference secretariat had had a close working relationship with NGOs since the Conference's inception and a high number of NGOs would be taking part. NGOs played a decisive role as partners with all the human rights treaty bodies, with differing modes of cooperation. The impact of the Committee's recommendations at country level was enhanced by the relevance and range of information made available by NGOs and through constructive partnerships between States parties and NGOs at the national level.

22. On a personal note, he wished to add that the Committee had been the first United Nations body to consider reports submitted by States parties and to monitor implementation of a major human rights treaty. From that point of view, the Committee played and always would play a prime role in the implementation of United Nations human rights programmes.

23. With regard to the appeal for voluntary contributions launched by Mrs. Robinson, he said that the United Nations regular budget allocated 22 million dollars each year for human rights programmes and that in 2000 the High Commissioner had obtained an additional 44 million dollars with which to finance a series of activities, including support for the work of treaty bodies. Without such contributions, the Office of the High Commissioner for Human Rights would not be able to provide treaty bodies with the desired level of servicing, which despite that had always been considered insufficient.

24. With regard to the importance of prevention in matters of racism and racial discrimination, he said that in 2000 the High Commissioner had submitted a report to the Commission on Human Rights on prevention with regard to human rights in general, and to racial discrimination and racism in particular. It was absolutely essential that the Committee continue its efforts to prevent violations and conflicts, especially at national level.

25. The CHAIRMAN said that the question of its active participation in preparations for the World Conference, mentioned by the High Commissioner for Human Rights, was being given priority by the Committee, which intended to be closely associated with that international forum and to be present in Durban, South Africa, both before and during the Conference. Recalling that the High Commissioner in her message had emphasized the importance of the current and future role of NGOs in the fight against racism, he said that he had been informed of the desperate financial plight of the Anti-Racism Information Service (ARIS) and that the Committee would discuss the matter.

26. Mr. YUTZIS agreed with the High Commissioner's view, as conveyed by the Deputy High Commissioner, that prevention was indeed fundamental for the fight against racism. That aspect had been discussed at length by the Committee, as its members felt that many so-called "preventive" measures were in fact taken after the event. True prevention implied detecting

potential areas or focuses of conflict in order to act before conflict actually broke out. In that respect, he recalled that he had made a number of proposals on behalf of the Committee at the regional seminar held in Santiago (Chile), concerning the establishment of work teams to detect conflicts in particular.

27. Lastly, he recalled that the Committee had expressed the wish to be represented at the World Conference in South Africa. That wish had been transmitted to the High Commissioner but it appeared that it could not be met. It was extremely important, however, that a few members of the Committee should take part in the event, at least at the outset. Mr. Ramcharan could perhaps draw the High Commissioner's attention again to that point.

28. The CHAIRMAN said that the Committee indeed had to make every effort to attain its goal.

29. Mr. de GOUTTES said that the meetings of the inter-sessional open-ended working group of the Preparatory Committee, which was preparing the draft declaration and programme of action of the World Conference, were of considerable interest to the Committee, which should therefore be briefed on its proceedings. He asked to what extent the documents prepared by the Committee had been taken into account in the preparation of the draft declaration.

30. Mr. ABOUL-NASR said it was essential that the Committee take part in the meetings of the inter-sessional open-ended working group in charge of preparing the draft declaration and programme of action to be submitted to the World Conference, especially since those meetings were being held during the Committee's session and near its venue. Could one of the members represent the Committee at those meetings and report back to the other members? It was the last opportunity the Committee had fully to participate in the preparations and to ensure that its contribution (A/CONF.189/PC.1/12), the final version of which had been established by Mr. Valencia Rodriguez, did not remain a dead letter.

31. Mr. SHAHI and Mr. FALL agreed with Mr. Aboul-Nasr.

32. Mr. RAMCHARAN (Deputy High Commissioner for Human Rights) said he would make sure that the inter-sessional open-ended working group's documentation was made available to all Committee members. The working group's aim was to conduct a preliminary examination of certain issues, including preparation of the draft declaration and programme of action, before the official meeting of the Preparatory Committee in May 2001. Since the Committee had been represented at all the other stages of the Conference preparations, it should also be present at the working group's meetings. It was up to the Committee to decide how it wished to participate in those meetings. It was important and useful for the Committee to prepare comments on the draft declaration and programme of action for submission to the working group.

33. In answer to Mr. de Gouttes' question regarding the extent to which the Committee's work had been taken into account in the preparation of the draft declaration and programme of action, he said that the notion that future strategies to fight all forms of racial discrimination should be based on the Convention and the deliberations of the Committee had substantially influenced the draft's authors. Many topics of concern which the Committee had emphasized

(in particular education and discrimination against certain groups such as the Roma) figured prominently in the draft, which was thus suitably imbued with the Committee's intellectual stream.

34. With regard to the secretariat's staff, he shared the Committee's opinion that it was important to ensure continuity and would draw the High Commissioner's attention to the matter. The High Commissioner endeavoured to obtain as much funding as possible for the activities of the treaty bodies, but the Governments preferred them to be financed out of the regular budget, which was slow in obtaining funds. Lastly, as far as the Committee holding its summer session in Durban during the World Conference was concerned, two conditions had to be met: the Committee had to be invited by the South African Government and the funds had to be found, since the General Assembly refused to pay the extra cost of holding the Committee's session away from the United Nations. However, even though it might not be possible for the whole Committee to meet in South Africa, there was no reason why some of its members should not go there to represent it.

35. The CHAIRMAN thanked the Deputy High Commissioner for Human Rights for presenting the High Commissioner's statement and hoped that the Committee would have the opportunity to resume its discussion with him during the fifty-eighth session.

36. Mr. Ramcharan withdrew.

The meeting was suspended at noon and resumed at 12.25 p.m.

ELECTION OF A RAPPORTEUR (agenda item 3)

37. The CHAIRMAN said that the Committee had to elect, a rapporteur from among its members to replace Mr. Banton for the remainder of his term of office, which would expire on 19 January 2002.

38. Mr. VALENCIA RODRÍGUEZ nominated Mr. Bossuyt, saying that the latter was familiar with the Committee's procedures, served on the Sub-Commission on the Promotion and Protection of Human Rights and was well known for his unswerving commitment to human rights.

39. Mr. de GOUTTES and Mr. YUTZIS seconded the nomination.

40. Mr. ABOUL-NASR also endorsed Mr. Bossuyt's nomination. He asked the Chairman to write to Mr. Banton expressing the Committee's gratitude for the quality of his work as both Committee member and Rapporteur.

41. The CHAIRMAN said that if there were no objections, he would consider that Mr. Bossuyt was elected rapporteur.

42. It was so decided.

43. The CHAIRMAN said that he would send a letter to Mr. Banton to express the Committee's gratitude and inform him of the name of his successor. He noted that Mr. Bossuyt could no longer act as Rapporteur for the application of article 15 of the Convention, and suggested that Mr. Pillai take his place.

44. It was so decided.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 11)

The Committee's contribution to preparations for the World Conference against Racism

45. The CHAIRMAN, recalling that the inter-sessional open-ended working group of the Preparatory Committee for the World Conference against Racism was currently meeting in Geneva, said that it was important for the Committee to be represented and suggested that two members attend the meetings in turn, according to their availability. They should make use of the Committee's contribution to the preparations for the World Conference against Racism, a document drawn up over several months the previous year. He reminded members that the text of the Committee's contribution had been finalized by Mr. Valencia Rodriguez, to whom he addressed his warmest thanks. He suggested that the two members who would represent the Committee on the inter-sessional open-ended working group should be Mr. Valencia Rodriguez, because of his work on the Committee's contribution, and Ms. McDougall, as coordinator of the Committee's contact group during the current session. If there was no objection, he would consider that the Committee approved his proposal.

46. It was so decided.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 7)

Qatar

47. The CHAIRMAN said that consideration of Qatar's situation, scheduled on the timetable included in the provisional agenda, had been dropped from the session's programme because the Government of Qatar had recently submitted a report to the Committee.

Fiji

48. The CHAIRMAN said that the Government of Fiji had asked the Committee not to examine the situation of Fiji during the current session because it intended to submit a report within a reasonable time, subject to the Committee's discretion. The Bureau considered that the Government's request was acceptable and that the Committee might set a deadline accordingly.

49. Mr. DIACONU approved the Bureau's proposal and suggested that the Committee ask the Government of Fiji to submit its report before the end of 2001.

50. The CHAIRMAN said that, if there were no objections, he would send a letter to the Government of Fiji indicating that the Committee had agreed not to examine the situation of Fiji at its fifty-eighth session and asking it to submit its report before the end of 2001.

51. It was so decided.

Côte d'Ivoire

52. The CHAIRMAN said that the Ivorian Government had asked for consideration of Côte d'Ivoire's report to be postponed because the new Government was engaged in establishing structures for the implementation of human rights.

53. Mr. FALL stated that the situation in Côte d'Ivoire had been a matter of deep concern for about two years, that a serious conflict had broken out between Muslims and Christians, in the north and south of the country, and that the numerous foreigners living in the country were in a very precarious situation. Many recent events were of direct interest to the Committee. It would therefore be desirable for the Committee to meet representatives of Côte d'Ivoire or, if that was not possible, seriously to examine the situation with a view to preventing an escalation in the conflict, within the framework of its efforts to prevent racial discrimination, including early warning measures and urgent action procedures.

54. Mr. ABOUL-NASR said that, given the gravity of the situation in Côte d'Ivoire, the Committee should think carefully about the best form of response: action by the Chairman, discussion within the Committee, dialogue with the country's representatives or any other procedure.

55. Mr. de GOUTTES suggested that the Committee invite one or more representatives of Côte d'Ivoire to present the situation in the country to the Committee at the end of the current session or at the beginning of the next session, as part of the Committee's action to prevent racial discrimination.

56. Mr. YUTZIS noted that the situation in Côte d'Ivoire again raised the question of the Committee's role when a conflict had broken out in a State party. In the case in question, the Committee might indeed consider, within the framework of its action to prevent racial discrimination, initially asking for a meeting with one or more representatives of Côte d'Ivoire to discuss the situation in the country.

57. Ms. JANUARY-BARDILL pointed out that a distinction should be drawn between the question of non-presentation of the report and that of the existence of a serious conflict in the country.

58. The CHAIRMAN invited Mr. Fall to examine the best method of proceeding and to present a proposal at a forthcoming meeting to which all the Committee's members could subscribe.

The meeting rose at 13.05 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1439th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 6 March 2001, at 3 p.m.

Chairman: Mr. SHERIFIS

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fifteenth periodic report of Argentina

ORGANIZATIONAL AND OTHER MATTERS (continued)

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GE.01-40901 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6)

Fifteenth periodic report of Argentina (CERD/C/338/Add.9; HRI/CORE/1/Add.74)

1. At the invitation of the Chairman, Mr. Solari, Mr. Zaffaroni, Ms. Gonzalez, Mr. Villalpando, Mr. Cerda and Ms. Nascimbene de Dumont (Argentina) took places at the Committee table.

2. Mr. ZAFFARONI (Argentina) said that his delegation, which hoped that its dialogue with the Committee would help his Government improve its strategies and objectives, wished to take up a number of points raised by the Committee in its concluding observations (CERD/C/304/Add.39) on Argentina's fourteenth periodic report. Turning first to article 14 of the Convention, he said that Argentina continued to have reservations about individual communications, because it was already a party to the American Convention on Human Rights, which had machinery for receiving such communications and bringing them before the Inter-American Court of Human Rights.

3. With regard to the recommendation that Argentina should declare propaganda for racist ideas, incitement to racial discrimination and the establishment of racist organizations to be offences punishable by law, the previous report had apparently failed to explain that matter sufficiently. In fact, such activities had been made offences as early as 1988 by Act No. 23,592, article 3 of which stipulated that such offences were punishable by up to three years' imprisonment. In addition, article 210 of the Penal Code covered any acts that might not already fall under Act No. 23,592. Funding of such offences, although not specified in the Criminal Code, was regarded as either instigation to commit, or complicity in the commission of, an act of racial discrimination and thus fell under articles 45 and 46 of the Penal Code.

4. Concerning the amendments to article 8, paragraph 6 of the Convention, he said that, owing to the change of government in Argentina, there had been a delay in their ratification, but the current Government intended to push them through Parliament as quickly as possible. As the Convention had been incorporated into the Constitution, the latter instrument also had to be amended, and that required a large parliamentary majority, but he did not foresee any major difficulty in obtaining parliamentary approval.

5. In respect of measures taken to heighten awareness of the need to combat racial discrimination, seminars had been held to alert primary and secondary school teachers to the issues involved; 500 teachers had taken part throughout the country, and by the end of March, 1,200 teachers in the Buenos Aires Metropolitan Area were expected to have done so. The provincial governments and the teachers' unions had given strong support to that effort. The National Institute to Combat Discrimination, Xenophobia and Racism (INADI) had also held courses at Argentina's civil service institutes on the need to combat racial discrimination. An agreement had been signed with a major sporting body, the Argentine Football Association, to broadcast at stadiums spots targeting racial discrimination. Courses had been offered to police and prison personnel. With the help of famous actors, the national radio network broadcast spots

every two hours on various aspects of the subject; a similar effort was being planned for television. A conference with the participation of Argentine, Chilean and Uruguayan universities, scheduled for late March, in preparation for the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, showed the importance his Government attached to such issues. Scholarships had been granted for participation in research programmes on various aspects of immigration and discrimination.

6. Regarding the terrorist attack against the Argentine Jewish Mutual Aid Association, he said that, notwithstanding a number of difficulties, including the fact that some of the accused were members of the police, progress had been made in bringing the guilty parties to justice. Initial hearings had begun for the trial of 15 suspects, and the main proceedings were expected to be held by the end of the year. A local group was thought to be responsible for the attack, but it had not been possible to ascertain whether there had been any international involvement.

7. In closing, he hoped that the Committee would take into account Argentina's difficult economic situation; budgetary stringency had been required as a result of conditions imposed by international bodies for paying back the country's foreign debt.

8. Ms. GONZALEZ (Argentina) pointed out first that Argentina had ratified International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries; once that instrument came into force on 3 July 2001, it would ensure greater protection for indigenous peoples as a group than had been the case in the past. Involvement of indigenous peoples in all matters affecting them in the regions where they lived, including the right to utilize, administer and conserve natural resources on their land, was thus guaranteed.

9. The Committee had inquired about the administrative status of the National Institute of Indigenous Affairs (INAI), which was responsible for indigenous policies. On 9 August 2000, the President of Argentina had issued Decree No. 167 decentralizing INAI and incorporating it in the Secretariat for Social Development. Prior to that decision, INAI had been part of the Under-Secretariat for Social Policy. Once its new administrative structure was approved, INAI would have the status of a State secretariat.

10. As to the extent to which indigenous peoples had been consulted during the transfer of land to indigenous communities, she said that, as part of the National Plan for Indigenous Communities, a programme had been drawn up for regularizing land ownership by indigenous communities and granting them ownership rights; in Jujuy province, 1,200,000 hectares were already being transferred to indigenous communities with the participation of a commission that included indigenous persons. Further data could be made available on the subject of land transfers if the Committee so wished. Difficulties persisted, however, because of resistance from persons who owned land occupied by indigenous communities, and in a number of cases such land had been expropriated by the State. There had also been conflicts with provincial governments, particularly in connection with the Wichi community; the central Government was doing everything it could to convince those provinces to accept the land transfers and was in constant contact with the association representing the landowners concerned.

11. With regard to indicators for the participation of indigenous persons in the police, the courts, Parliament and, more generally, the social and economic life of the country, she said that Argentina was currently completing a census of indigenous persons. Owing to budgetary constraints, a census of the entire population scheduled for 2000 had not been completed; hence the difficulty of providing the Committee with the figures requested. It was hoped that an indigenous census could be concluded soon.

12. Mr. VALENCIA RODRIGUEZ (Country Rapporteur), thanking the delegation for updating the fifteenth periodic report, which had been produced in 1999, noted that the country's economic difficulties had not been overcome; the gross domestic product had declined and unemployment had risen. Those economic problems had a particularly heavy impact on indigenous groups, which constituted a significant proportion of the population, and on ethnic minorities.

13. International instruments, including the Convention, were the supreme laws of the land. Pursuant to a Supreme Court decision of 7 July 1992, those instruments took precedence over domestic legislation. He understood that to mean that the Convention could be invoked directly in Argentine courts.

14. He noted that there were a number of bodies, governmental and parliamentary, which dealt with human rights; it was important to ensure that they coordinated their work so as to prevent duplication of effort. The Committee appreciated the wealth of information provided in the report on the National Institute to Combat Discrimination, Xenophobia and Racism (INADI). Paragraph 11 gave an account of that body's activities in the five months of its existence. He requested more up-to-date information on its activities since then. Were indigenous communities and other minority groups represented in INADI's board of directors (para. 7)?

15. According to the 1991 census, the Argentine population was still composed largely of Europeans or their descendants. With the recent increase in immigration from neighbouring countries, the conclusion of agreements with countries such as Bolivia and Paraguay to streamline immigration procedures was a welcome development. He asked whether article 25 of the 1853 Constitution was still in force and, if so, to what extent it was still implemented in practice. It was to be hoped that the Government's immigration policy eschewed discriminatory criteria based on racial, ethnic or national origin.

16. He invited the delegation to comment on complaints that poor immigrants, especially from neighbouring countries, were required to pay high fees for residence papers and were hampered by bureaucratic immigration procedures. There had also been reports of discriminatory treatment of asylum-seekers and refugees. He recommended that the authorities review the situation and consider acceding to the 1961 Convention on the Reduction of Statelessness, which would promote the integration of refugees by ensuring that the granting of citizenship was based on established legal principles.

17. He was pleased to hear about the presidential decree issued for the establishment of the National Institute of Indigenous Affairs (INAI). The Committee would appreciate additional information about the practical impact of the cooperation agreements concluded by INAI with provinces with aboriginal settlements. Listing a number of areas on which the Institute should

focus in the future, he said that the migration of indigenous peoples to urban areas should not lead to the erosion of their cultural values or to impoverishment. The important role of the Defender-General of the Nation in asserting the rights of indigenous peoples under customary law and defending their interests from attack by powerful political or economic groups should be recognized. The practice of consulting indigenous communities about issues affecting them should be consolidated. Action to secure recognition of the legal personality of indigenous communities should be continued. Projects to enforce the right to bilingual and intercultural education should be intensified, particularly through the Intercultural Educational Community and indigenous community workshops.

18. Major steps had been taken to secure the traditional ownership of land. At the same time, the possibility of individual ownership should not be ruled out. The Committee was still seriously concerned about the existing situation and drew attention to its General Recommendation XXIII. According to the report, the handing over of land was subject to the principles of inalienability, unseizability and non-transferability. What were the implications of those restrictions for rights of inheritance? What stage had been reached in the process of mediation for the settlement of disputes affecting the communities in the Pulmari area (Neuquén province), the Kolla communities (Salta province) and the Mapuche Vera community (Neuquén province)? Efforts to involve indigenous communities in the management of natural resources, especially through sustainable development projects, should be stepped up. He asked whether the obstacles impeding the implementation of social security systems referred to in paragraph 88 of the report had been overcome. Coverage for the groups mentioned in the paragraph should gradually be extended. It was to be hoped that the Government's present and future action to mitigate the poverty of indigenous communities and minority groups, which had been exacerbated by globalization and other factors, would prove effective.

19. He reiterated the Committee's previous request (CERD/C/304/Add.39) for information about the representation of indigenous communities and ethnic minorities in the civil service, the police, the judicial system, the Congress and the socio-economic life of the country in general. Women in general, and indigenous women and women belonging to minority ethnic groups in particular, continued to suffer discrimination, especially in employment. Steps should be taken to address existing disparities.

20. While he had taken note of the delegation's statement regarding Act No. 23,592 of 1998, he stressed that its provisions were still not entirely in line with the basic requirements of article 4 of the Convention. With regard to article 5, he welcomed the Supreme Court's interpretation of the word "inhabitant" as covering both Argentine nationals and foreigners and its recognition of the legality, in the light of article 16 of the Constitution, of any special measures taken on behalf of vulnerable groups.

21. Referring to the information in paragraph 115 regarding progress in respect of the right to nationality, he asked for information concerning citizens who had been deprived of their Argentine citizenship for purely political reasons and whose cases had not yet been settled. He encouraged the Government to keep the Committee informed of progress in dealing with complaints falling under article 6 of the Convention, especially the work of the INADI

Complaints Centre. It would also welcome information about other remedies for victims of discrimination, such as recourse to the Ombudsman (Defensor del Pueblo) or amparo or habeas corpus proceedings.

22. The Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had referred in a report dated 8 September 1999 (A/54/347) to racist and xenophobic organizations in Argentina, meetings of neo-Nazi groups and a political party - the National Workers' Party - with racist tendencies. According to the 1999 Report of the United States Department of State, discrimination against indigenous peoples persisted and there had been a number of cases of anti-Semitism. What action had been taken to address those problems?

23. With regard to article 7 of the Convention, he welcomed the activities in the areas of training, promotion and dissemination undertaken by the Ministry of the Interior and INADI. In the light of reports of police brutality throughout the country, he recommended that special attention should be given to the Convention in courses or seminars for members of the police and armed forces. The Convention, the report and the Committee's concluding observations should be widely disseminated, particularly among indigenous communities and minority groups.

24. He reiterated the Committee's request to the Government of Argentina to consider making the declaration under article 14 of the Convention and to complete the process of ratification of the amendments to article 8 of the Convention.

25. Mr. de GOUTTES, commending the Government of Argentina on its regular submission of reports to the Committee, asked what exactly was the status of international treaties under Argentine law. According to paragraph 3 of the report, the Constitution and international treaties had the same standing, were complementary and could not supplant or cancel one another, whereas, according to the preceding report (CERD/C/299/Add.11), treaties were considered, under article 75, paragraph 22, of the Constitution, to rank higher than domestic law and their provisions could be invoked before the courts.

26. He gathered from paragraph 6 of the report that INADI had very wide powers, but it seemed from paragraph 7 that all its members came from the executive branch. Paragraph 8, on the other hand, referred to plans to establish an advisory council of persons representing non-governmental organizations (NGOs) specialized in combating discrimination. Had the council been established in the meantime? He too would appreciate an update of INADI's activities covering the period since the submission of the report.

27. He wondered how INAI could have carried out all the activities described in the report although it had not been legally established for budgetary and other reasons. What stage had been reached in the legislative reform based on indigenous participation referred to in paragraph 28?

28. With regard to article 4 of the Convention, he asked for practical examples of the implementation of Act No. 23,592 of 21 August 1998, which increased the penalties in the Penal Code for offences motivated by racism.

29. It was regrettable that Argentina had failed to respond to the Committee's request in paragraph 22 of its concluding observations on the previous report for information on the situation of the members of indigenous communities and ethnic minorities, as such data were an important tool for evaluating programmes on behalf of vulnerable sectors of the population. He likewise regretted the lack of statistics regarding prosecution for racist acts. He also noted with concern that the proceedings in a number of cases involving racism, especially those for acts of anti-Semitism perpetrated in 1992 and 1994, had not been completed. According to the delegation, a final decision in the latter cases was expected by the end of the year. He inquired about the reasons for the delay. With regard to article 6 of the Convention, he commended the establishment of a free telephone line to receive complaints of racial discrimination.

30. According to some NGOs, the economic recession and increasing unemployment had recently led to an upsurge in xenophobia, especially against immigrants from neighbouring countries, refugees and asylum seekers (including many from Eastern Europe and Cuba) and descendants of African immigrants. Many immigrants were reportedly held in administrative detention for indeterminate periods, with no possibility of judicial review by the immigration authorities. He would welcome the delegation's response to those allegations.

31. Mr. FALL said he associated himself with Mr. de Gouttes' question about the status of international treaties in Argentine law. He welcomed the provisions of article 11 of the Constitution of the Autonomous City of Buenos Aires cited in paragraph 4 of the report and recommended that similar provisions should be adopted for the country as a whole. Noting from paragraph 31 of the report that no up-to-date census information was available on the ethnic composition of indigenous communities, he urged the Argentine authorities to make a serious effort to compile statistics in time for its next periodic report to the Committee.

32. Paragraph 92 stated that the areas where indigenous communities lived were those with the highest levels of unmet basic needs. He understood at the same time that the authorities were encouraging immigration, especially from European countries. How could such a policy be justified when high unemployment rates were being recorded among indigenous communities? Should their development and protection not be given priority under article 2 of the Convention? He was curious to note the absence of any reference in the statistics provided in the report to persons of African origin. Could the delegation account for that omission?

33. Mr. PILLAI drew attention to paragraph 13 of the report which referred to the spirit of openness of the Argentine Republic in welcoming foreigners and its sound tradition on the question of migration. But the bulk of the report dealt with indigenous peoples and there was little information about ethnic diversity in the non-indigenous population. According to paragraph 15, Argentina had hosted a considerable number of refugees and displaced persons in the previous 80 years. He would be interested to hear about their current situation, including their ethnic diversity and the extent to which they and their descendants enjoyed the guarantees provided in human rights treaties. What mechanisms existed to ensure the effective implementation of the Convention and how well were they functioning?

34. He too stressed the need for up-to-date census information. Referring to paragraph 40 of the report, he asked whether the lack of legal personality as indigenous communities had implications for their enjoyment of socio-economic benefits and for government action on their

behalf. With regard to land ownership by indigenous communities and INAI's responsibilities in that regard as described in paragraph 58 of the report, he asked whether there were any criteria to identify land that was suitable and sufficient for human development, how the respective land needs of communities and individuals were to be identified and what consideration was given in that context to the productivity of the land concerned.

35. Mr. DIACONU said that the report and the introductory statement by the delegation provided interesting information on legislative and institutional developments that had occurred in Argentina in line with the Convention and would be found useful by countries both in Latin America and in other regions. Paragraphs 2, 3 and 105 of the periodic report suggested that only some international treaties enjoyed constitutional ranking. Was the Convention one of them, and if not, what were the implications for its implementation in domestic law?

36. The very important concept of the recognition of the ethnic and cultural pre-existence of the indigenous populations was well covered in the report, with information (paras. 37 et seq.) concerning relevant programmes in education and also for the restitution of indigenous lands. However, apparently not all such programmes had proved successful. According to a report published by ILO in March 2001, the Mapuche communities of Pulmari were still denied access to their land; moreover, the building of a bridge over the river Pilcomayo would adversely affect the local indigenous community. He would welcome some clarification in that connection. He commended cooperation between the Governments of Paraguay, Uruguay, Bolivia and Argentina on the Paraguay-Paraná Waterway in an effort to protect the indigenous populations living on the banks of those two rivers. It served as an example to be followed by countries in other regions. Notwithstanding the large number of programmes undertaken, the areas traditionally inhabited by the indigenous communities reportedly (para. 94) remained the most deprived and should therefore be the focus of attention.

37. Since Argentine NGOs had reported cases of racist attacks against black foreigners visiting the country, he wondered about the numbers and situation of the local black population - descendants of the African slaves brought to the country in the nineteenth century.

38. With respect to article 3 of the Convention, the report (para. 97) referred solely to the question of apartheid. However, the article also covered segregation. Member States were duty bound to combat social segregation, which was one of the causes of racial discrimination. As to article 4, the report (paras. 98-99) failed to address the need to ban organizations that encouraged and practised racial discrimination. It was not merely a matter of punishing the members of such organizations, but also preventing their coming into being. In conclusion, he was surprised by a reported decision by the Supreme Court of Justice to overturn a lower court conviction of a group of skinheads for a racist act in 1995 against a youth believed to be Jewish, on the grounds that the anti-Semitic expressions used by the group were their customary war cry. In his view, such an act warranted punishment.

39. Mr. THORNBERRY said the report raised many interesting points that warranted further consideration. He shared concerns expressed about the constitutional ranking of human rights instruments. However, aside from the status of the Convention itself, he wished to know more about other non-treaty standards that were fundamental to the work of the Committee.

40. Paragraph 32 of the report listed a number of measures to deal with the increasing migration of indigenous people to urban centres. Were they intended in part to revitalize the cultural traditions of indigenous populations, along the lines of the Committee's General Recommendation XXIII? With reference to the information provided in paragraph 30, and noting Argentina's ratification of ILO Convention No. 169, he stressed that traditional occupation of land created international rights, which could not be disposed of by domestic law arguments concerning the notion of encroachment. In its description of intercultural education, the report focused on educational activities targeted at the indigenous population. However, he understood the word intercultural as meaning something mutually beneficial. To what extent was the population at large encouraged to learn about the culture and history of the indigenous population? According to paragraph 43, the granting of legal personality to indigenous communities hinged on recognition of their pre-existence. He asked what criteria were used to establish such pre-existence and whether, for instance, oral evidence was among them. Since ethnogenesis was a long and ongoing process, Argentina's insistence on fixing a point in time before granting such rights did impose a limitation.

41. Mr. ZAFFARONI (Argentina) said that his delegation would be replying to most questions at the following meeting. However, in view of the concerns expressed by many Committee members, he wished to clarify the status of international treaties vis-à-vis Argentine domestic legislation, by explaining the political background to and interpretation of article 75, paragraph 22, of the new Constitution, in effect since 1994.

42. During the period of military dictatorship, Argentina had effectively remained isolated from the international community by refusing to ratify international treaties or be part of the inter-American system. Following the re-establishment of a constitutional government, between 1984 and 1985 Argentina had ratified virtually all of the international human rights instruments and had decided to recognize the jurisdiction of the Inter-American Court of Human Rights. Such action had nonetheless prompted considerable criticism from the more conservative groups on the grounds that it would undermine national sovereignty and the constitutional provision whereby the nation's supreme judicial authority was the Supreme Court of Justice. Subsequently, there had been much debate in Argentine legal circles on the merits of a monist versus a dualist approach to the law; it being recognized that the latter had been abandoned by most nations, since it had essentially been used by colonial powers to avoid granting the rights protected by treaties to the inhabitants of their colonies. The problem in Argentina had been that, on account of its federal system, the status of international treaties had not always been recognized by provincial courts. Although the 1992 Supreme Court judgement in the Ekmekdjian v. Sofovich case had supported the monist theory, it had not entirely resolved the problem, since further action by the Supreme Court could have resulted in a return to the dualist approach. In order to close the debate once and for all, in the 1994 constitutional reform, article 75, paragraph 22, had been introduced, whereby the main international human rights instruments (see para. 44, document HRI/CORE/1/Add.74), including the Convention, had been deemed as having constitutional rank.

43. The remainder of the provision to the effect that such treaties did not derogate from any article of the first part of the Constitution, and must be interpreted as complementary to the rights and guarantees recognized thereby, was understood in Argentine jurisprudence as meaning that the texts of such international treaties could by no means be interpreted as restricting or

diminishing the basic declaration of rights enshrined in the Constitution of 1853. Other international treaties, which did not deal specifically with human rights issues, had a lower status vis-à-vis the Constitution. In the event of conflict with the Constitution such treaties or the laws ratifying them could be declared unconstitutional by the Supreme Court of Justice, or indeed by any Argentine judge of lower rank.

44. The delegation of Argentina withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4) (continued)

Appointment of a convenor for the working group on communications

45. Following a proposal by Mr. FALL, supported by Mr. BOSSUYT, the CHAIRMAN said he would take it that the Committee wished to appoint Mr. de Gouttes as convenor of the working group on communications to replace the outgoing member Mr. Nobel. Stressing the open-ended nature of the working group, he encouraged input from other Committee members aside from the three constituent members.

46. It was so agreed.

Procedure for the consideration of concluding observations

47. The CHAIRMAN said that, following the closure of the fifty-seventh session, he had received a complaint from the Permanent Mission of the United Kingdom to the United Nations in Geneva to the effect that the United Kingdom Government had been apprised of the Committee's concluding observations and recommendations concerning the United Kingdom report via the press and media and not via its diplomatic mission in Geneva, as was standard practice. It had transpired that the Department of Public Information (DPI) had issued press releases on certain concluding observations and recommendations before their finalization and adoption by the Committee. He had apologized to the United Kingdom Permanent Mission, explaining that the press officers did not receive instructions from the Committee. In the past, some Committee members had complained about the press releases, but the Committee could do nothing on either count, given the need to observe freedom of the press. In order to avoid the recurrence of such incidents, he suggested that the Committee should review its current working methods for the consideration of concluding observations and take a decision on future practice during the present session. It was worth noting that most other treaty bodies discussed concluding observations of State party reports in closed meetings.

48. Mr. BOSSUYT said that it should be impressed upon the State party in question that the Committee was not at fault. Its concluding observations were discussed at public meetings open to anyone, including any delegation concerned. Did the State party claiming to have been victimized have a delegation so small as to be unable to cover all committees meeting in Geneva?

49. The CHAIRMAN asked whether members felt the Committee should continue to consider concluding observations in public meetings or discuss them in camera as other monitoring bodies did?

50. Mr. DIACONU remarked that a State party should receive the text of the Committee's concluding observations on its report at least at the same time as the press and the public, with nothing published until the very last day of a session. He asked whether the Secretariat was in a position to ensure that State parties received them on that day. It was true that concluding observations were available at the United Nations to anyone who took the time to obtain them. At the same time, to discuss them in camera - the option he favoured - had the clear advantage of enabling Committee members to express their views more freely.

51. Mr. de GOUTTES said the problem that had arisen in connection with the United Kingdom was a delicate one. States parties' legitimate interests must be taken into account, but so must the Committee's effectiveness and the practices of other treaty bodies. One advantage of the practice used thus far in the Committee was that it made for an adversarial atmosphere, enabling the delegation to adduce further arguments and explanations. However, in the light of recent events, it obviously had the disadvantage of allowing the content of concluding observations to be publicized prior to their finalization and adoption. Many States were seeking reforms of the human rights monitoring bodies; the Committee therefore had reason to be concerned about their potential proposals. It would also be prudent to align the Committee's practice with that of the other treaty bodies, thus avoiding divergent procedures among United Nations bodies. In short, the disadvantages of public discussion outweighed the advantages. The in camera option would afford a more frank and open debate by the Committee and prevent draft concluding observations from being leaked.

52. The CHAIRMAN said that a review of the practice of the other treaty bodies undertaken at his request showed that they all discussed their concluding observations in camera, with certain variations: the Committee against Torture read out the final text of its concluding observations in a public meeting; the Committee on the Rights of the Child informally adopted the text in private session, apprised the State party of its contents and formally adopted it once more on the last day of the session in a public meeting; while the Committee on Economic, Social and Cultural Rights released its concluding observations to the press on the last day of a session.

53. Mr. ABOUL-NASR said that the Committee had been the first of the monitoring bodies; it could be proud of its work and had no need to emulate those that had been constituted later. Some States parties, once they had presented their reports, neglected to attend other meetings, but that did not prevent them from filing complaints against Committee members; he himself had been the victim of such a complaint to his Government. While he had no strong feelings on the matter, he would prefer the current practice to be maintained. It was no secret that the Committee was there to express its dismay at non-compliance with the Convention and there was accordingly no call for excessive prudence. Article 9 of the Convention provided that State parties must be notified of the concluding observations on their reports, so that their comments could be submitted to the General Assembly at the same time as the Committee's suggestions and recommendations. Any State party was free to protest. It could be argued that the Department of Public Information had erred, but, had the United Kingdom been sufficiently interested, it could have sent a delegation to the meeting at which the concluding observations had been discussed, thus obviating the problem that had arisen.

54. Mr. RECHETOV, endorsing the views expressed by Mr. Bossuyt and Mr. Aboul-Nasr, said that the method currently used in the Committee had the virtue of transparency, since a State party's report was considered in the presence of its delegation, followed by a public meeting at which pains were taken to ensure that the concluding observations reflected what had occurred during consideration of the report. Any discussion of concluding observations in a private meeting could lead to the inclusion of matters that had not been discussed in public. He disagreed with Mr. Diaconu's reservation, since there should be no fear of frank speaking in a public meeting where human rights were concerned. He was against emulating other treaty bodies for fear of criticism by the would-be reformers of the United Nations human rights bodies. He supported Mr. de Gouttes' view that the State party and the public should be officially apprised of the contents only once they had been finalized.

55. Mr. SHAHI said that what was most important was the need for a finely balanced approach. Nothing should be published in the press while the concluding observations were still in draft form. Only upon formal adoption should they be submitted to the State party concerned and made public.

56. The CHAIRMAN pointed out that it was not a question of going to press. The fact was that DPI was present at such meetings and issued press releases.

57. Mr. YUTZIS said that the main issue was that Committee members should maintain maximum independence as experts. While the argument for discussing concluding observations in camera was to avoid the explicit and implicit pressures that could obviously be exerted on Committee members, he felt strongly that the Committee should express its views in public. A turn of phrase could always be altered or an emphasis changed. What could not be changed was what had been said. Indeed, strong views had at times been expressed in public discussions of concluding observations. At others, views more favourable to the State party had been aired. Moreover, the press often grossly misrepresented the proceedings of meetings. He was therefore convinced that the current procedure was the best.

58. Mr. BOSSUYT said he was against a change of procedure. He understood the embarrassment of the British authorities, which had rightly communicated their disapproval. However, the United Kingdom delegation, and not the Committee, bore the responsibility. He could not see why the Committee was accepting blame when a State party with a delegation sufficiently large to have followed the work of the Committee had failed to do so. He agreed with Mr. Aboul-Nasr that the Committee, as the oldest of the treaty bodies, would be taking a retrograde step if it were to adapt its practices to those of subsequently established bodies. As Mr. Yutzis had pointed out, much stronger sentiments were often expressed in Committee members' personal statements than in the concluding observations, the text of which was often considerably diluted by the country rapporteur before the discussion stage. The Committee could, however, make a point of inviting delegations concerned to attend meetings at which concluding observations on their reports were to be discussed.

59. Mr. FALL said that the fact that the Committee had been the first of its kind did not automatically make its practices the best. He was in favour of adopting the in camera procedure. Consideration of reports comprised two phases: first, a public meeting in which a State party presented its report, which was discussed by the Committee; second, a lively discussion among

Committee members concerning concluding observations. If the Committee did not speak with one voice, then that discussion should not take place in public. If it were held at a private meeting, members could frankly express their views and maintain their independence; there was no need for anyone to know exactly how those conclusions had been reached; and there would be no need to ensure that the State party received the text before it was made public.

60. Mr. TANG Chengyuan said that the overriding aim should be to ensure that States parties redoubled their efforts to improve their implementation of the Convention. Concluding observations were not an isolated feature, but flowed from the discussion of the report. He was therefore in favour of maintaining public discussion and, in so doing, the Committee's transparency.

61. Ms. JANUARY-BARDILL said that it was helpful to learn what other committees were doing and agreed with Mr. Fall that there was no need to adhere to historical practices. While the matter clearly called for further discussion, an open process could sometimes compromise Committee members' independence without, in the end, significantly increasing transparency. She also agreed that nothing in draft form should be released to the press.

62. The CHAIRMAN requested members to reflect on the matter for further discussion in due course, inviting Mr. Shahi to prepare a draft text for the Committee's consideration.

The meeting rose at 6.05 p.m.

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Fifty-eighth session

SUMMARY RECORD OF THE 1440th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 7 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Fifteenth periodic report of Argentina (continued) (CERD/C/338/Add.9)

1. At the invitation of the Chairman, the members of the delegation of Argentina took places at the Committee table.

2. Mr. ZAFFARONI (Argentina), replying to questions put by Committee members at the preceding meeting, said that article 25 of the Argentine Federal Constitution, which provided that the Federal Government must encourage European immigration, was not implemented in practice. The only provision of that article which was applied was the one that prohibited restricting or limiting entry into Argentine territory by those wishing to settle there. The procedure for amending the Argentine Constitution was relatively rigid, for it could be undertaken only by a constituent assembly convened by a two-thirds majority of both Chambers of the Federal Congress. That was why the provision was still part of the Constitution.

3. Regarding the activities of neo-Nazi groups, he said that there were only two small groups; they operated, essentially, in the Buenos Aires region and consisted mainly of young people who engaged in acts of vandalism and who were not very indoctrinated. The Government had decided, with the approval of the Simon Wiesenthal Centre, not to react to the provocations of those two small groups so as not to play their game. They were not - nor could they become - political parties, for they had only about 100 members each, at most; to form a political party, it was necessary to have 2,000 members. One of the groups had claimed to have 1,500 members, but it had turned out that the figures were based on forged signatures. Moreover, the head of one group had been found guilty of engaging in racist propaganda, under article 4 of the Convention. Finally, although it was true that the groups had, at times, been used by corrupt police officers, particularly in Buenos Aires, they were more of a security problem for minorities than a political problem for the authorities.

4. As to the difficulty of obtaining a residence permit in Argentina, he said that a new immigration bill was currently before the Population Commission of the Chamber of Deputies. The previous Government had concluded an agreement on the subject with an Argentine company and the present Government could not cancel it, for financial reasons. Under the terms of that agreement, the company was supposed to shoulder part of the costs incurred by immigrants to obtain a residence permit. That agreement obviously posed the issue of the difficulties encountered by State bodies responsible for immigration matters. However, it should be pointed out that Argentina was experiencing economic difficulties and was not very high up on the list of countries people wanted to emigrate to and that it had essentially become a receiving country for immigrants from the regions, particularly from neighbouring countries. The annual flow of immigrants was estimated at some 40,000 or 50,000 people. Over the years, the number of illegal immigrants subject to various forms of exploitation, both economic and sexual, had been increasing. Several decisions had been taken to regularize their situation, but the present Government hoped to be able to adopt a more rational immigration law, which would

facilitate the controlled entry of immigrants. The National Institute to Combat Discrimination, Xenophobia and Racism (INADI) and various religious groups and non-governmental organizations had agreed with the Government to establish an immigration advisory service and a bureau was about to open to advise immigrants and ensure that they did not pay excessively high prices to intermediary companies in order to settle in the country. Furthermore, all primary and secondary education establishments were required by law to accept any immigrant under 18 years of age, even if he or she did not have an Argentine identity document.

5. Regarding the Immigration Department's powers to expel and detain, he said that no Argentine administrative authority had the power to place anyone in detention without judicial review. Habeas corpus applied, including in the event of a public emergency. It was true that there had, in the past, been a residence law which authorized the executive to order people expelled without judicial review, but it had been repealed more than half a century earlier.

6. Referring to the case of a Mozambican national on his way to La Paz, Bolivia, who had been intercepted at the airport in Buenos Aires because he did not have an entry visa for Argentina, detained and then expelled a few hours after his arrival, he said that the case had been reported by INADI and the Public Prosecutor's Office had immediately opened an investigation which had led to a trial and the officials responsible for that violation had been summoned to appear. There had also been another case in which the immigration services had been compelled to suspend the expulsion of 3,000 illegal immigrants on the orders of the Prosecutor. Irregularities and arbitrary actions taken by immigration personnel were therefore strictly punished.

7. As for the 1992 terrorist acts against the Israeli Embassy, he said that that case had been considered by the Supreme Court, which, under the Constitution, had jurisdiction over actions aimed at foreigners. In that instance, the Supreme Court, had found itself for the first time confronted with a case in which it was, de facto, called on to play the double role of investigator and judge. It was true that the Court should simply have referred the case to a Federal judge, for the investigation had produced little result.

8. With regard to the attack on the headquarters of the Argentine Israelite Mutual Association (AMIA), on 18 July 1994, he conceded that proceedings in that matter had been very slow, since no decision had yet been handed down, even though six years had passed. However, the case was extremely complex and police officials were involved. Several cover-ups had been brought to light and 15 people were currently awaiting trial in connection with that case. The investigation into the murders was closed; although it had confirmed the involvement of members of the police security forces, it had not been possible to determine who had been behind the attack.

9. Regarding the situation of persons of African origin, he said that, since Argentina had not, in the previous century, engaged in intensive cotton, sugar cane or cocoa growing, there had been very few slaves there. The slave population had been freed in 1803 and had gradually intermarried with the population and had become almost "invisible". In 1920, there had been a wave of black immigrants, mainly from Cape Verde. Argentina had experienced very few cases of racism against that population and, in that area, did not have problems comparable to those of the neighbouring countries.

10. Replying to a question put by Mr. Pillai concerning the situation of other ethnic groups in Argentina, he said that there had been problems of racism, but that they had corresponded to certain geographical configurations which had disappeared with the arrival of new generations. Of course, like most Latin American countries, it had experienced, at the start of the twentieth century, the hegemony of positivist ideological doctrines which had supported racism against the Indians and favoured a typically European immigration. The grandchildren of the first twentieth-century immigrants were, indeed, perhaps guilty of a vague kind of racism against persons of mixed race who had gradually moved to the cities and against immigrants from neighbouring countries such as Bolivia, Paraguay and Uruguay; however, school had played and continued to play an important role in the homogenization of society. There was no clear manifestation of racism in Argentina in the sense of State-sponsored racism. Currently, the biggest manifestation in terms of racism concerned a private radio station in Buenos Aries which had a programme called La Primera. That station did engage in speech that bordered on racist propaganda, but it was not, in the Government's view, deliberate ideological propaganda, but rather the action of a small enterprise which was exploiting an ultra-reactionary segment of society.

11. As to whether racist organizations were prohibited by law, he said that Argentine legislation was in line with the Convention in that regard: the establishment of or participation in such organizations was punishable by one month to three years' imprisonment. Furthermore, if such an organization was found guilty of acts of violence, then it was subject to the Penal Code, which provided for prison sentences of 3 to 10 years. Soon there would be no loopholes left in the law, for a commission had been set up within the Ministry of Justice and was working actively to bring existing criminal legislation into line with international conventions. It was in close contact with INADI and would consult the latter prior to submitting its report.

12. Regarding questions about judicial practice, he said that, due to lack of resources and qualified personnel, the data had not been computerized and, for that reason, his delegation could provide only an incomplete general picture. The principal judgements concerning cases in which INADI had intervened had resulted in the payment of compensation to persons who had been discriminated against because they were HIV positive, the granting of permission to use foreign and indigenous names, the restoration of the rights of homosexuals and transexuals and the abolition of the requirement that persons wishing to enter the police force in the provinces must be Argentinian by birth. INADI used several legal means, including habeas corpus and amparo, and made its lawyers available to persons wishing to institute legal proceedings. The lack of a network of lawyers in Argentina was dealt with by agreements with the Argentine Bar Association and the Federation of Law Schools. That was why there was no longer a hotline: the country was entirely covered thanks to those agreements.

13. The Committee had referred to the overturning of the conviction of the skinheads who had attacked and injured a young man whom they had believed to be Jewish. The decision of the Court of Cassation, which he, personally, believed to be unacceptable, had prompted a strong reaction in public opinion and had been the subject of a complaint by Jewish associations. The overturning of that conviction had yet to be confirmed because the Supreme Court had not yet come to a decision on the matter. The Council of the Judiciary, the body responsible for appointing and removing judges, was currently investigating a complaint against three judges of the Chamber which had overturned the conviction.

14. Mr. VILLALPANDO (Argentina) said he was using information from the document without a symbol entitled "Politics against Discrimination", which had been distributed in the meeting room in English only, to reply to the question on the activities of INADI. The first part of that document described INADI's establishment and mandate. Minorities were represented on the two main organs of INADI, the Board of Directors, which included representatives of the State, as well as representatives of three non-governmental organizations well known for their commitment to the fight against racism, and the Advisory Council, made up of representatives from 10 associations active in defending minority rights.

15. In 2000, INADI had concluded a technical and research assistance agreement with Lomas de Zamora National University and agreements with associations active in promoting and raising awareness of anti-discriminatory practices, as well as agreements with the Confederation of Teachers on continuing education in areas related to discrimination; with the Ministry of the Interior and the Ministry of Justice and Human Rights on the training of police, gendarmerie, prefecture, prison and border police personnel; with the Chamber of Deputies of Buenos Aires Province on cooperation and mutual assistance; and with the city of Buenos Aires Bar Association on cooperation in the defence of fundamental rights. An anti-discrimination campaign using radio and television advertisements had also been launched in 2000 and would be renewed in March 2001. INADI also intended to put up posters in educational establishments, health centres, administrative offices and railway stations. In 2000, a number of seminars and awareness activities had been organized for the civil service and, in addition, in cooperation with specialized non-governmental organizations, INADI had created an immigration bureau which provided immigrants without papers free assistance in obtaining a residence permit, so that they would not have to turn to middle-men who often took advantage of them.

16. In the area of research, an agreement had been concluded with the Tres de Febrero National University on the publication of a series of studies on the main causes of discrimination. Fifteen fellowships had been awarded to students from other universities for internships at INADI, which had also created a Complaints Centre for processing complaints made by individuals who believed that they had been the victims of discrimination. Since its creation, the Centre had processed 3,500 files, which had been evaluated and selected using criteria flexible enough to allow for the elimination of complaints which were clearly unfounded. INADI attempted to settle those complaints by working with the administration when the accused party was the State and, in other cases, used mediation. It also provided advice with regard to any criminal proceedings.

17. In reply to a question concerning the situation of refugees, he said that Argentina had ratified the Convention relating to the Status of Refugees in 1965. Its so-called geographic reservation, according to which it would accept only refugees from Europe, had been withdrawn in 1983 upon the return to democratic government; consequently, the international conventions relating to refugees were fully recognized by Argentina. In March 1985, the Refugee Eligibility Committee had been created by decree to review requests for refugee status. Its mandate was to undertake studies on the refugee issue with a view to defining appropriate strategies and taking decisions on the granting of refugee status. It was made up of civil servants from the Immigration Office and a representative of the Ministry of Foreign Affairs; a representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) was allowed to

attend meetings and participate in discussions. UNHCR could also appeal any decision to deny refugee status. In that context, he indicated that there had been 2,396 refugees in Argentina at the end of 2000, with 1,274 requests for asylum still under review. Two draft reform measures had been introduced in parliament in order to accelerate the excessively long refugee status regularization procedure. Each reform provided for the participation of UNHCR, which remained in close contact with INADI. The former's main objective was to harmonize national procedures with those of other countries in the Southern Cone in order to ensure identical levels of protection throughout the region, an objective which his Government shared.

18. Lastly, referring to discrimination against Bolivians in particular, he said that, owing to the lack of time, he would refer the Committee to the document without a symbol which had been distributed in the meeting room in Spanish only and which had been submitted to the Stockholm International Forum: Combating Intolerance, held in January 2001. He would however be happy to provide any further information the Committee might request.

19. Ms. GONZALEZ (Argentina), replying to the many questions on the situation of indigenous populations and referring to the need to implement preferential measures on their behalf, said that her Government recognized that, to a great extent, the basic needs of indigenous peoples were not being met and that they were socio-economically disadvantaged. Accordingly, constitutional reforms, recent legislation on the rights of indigenous peoples and numerous public programmes had been aimed at remedying that situation, in particular by creating mechanisms for preferential support. The very existence of the National Institute of Indigenous Affairs (INAI) was proof of that commitment. Since the report had been prepared, a national plan for indigenous peoples had been drawn up and would soon be officially promulgated through a Presidential decree.

20. Turning to paragraph 28 of the report, she explained that, at the time the report had been drafted, the National Institute of Indigenous Affairs had not yet been created. In the interval, a Presidential decree adopted in August 2000 had established the Institute's management and operational system, which was quite decentralized. That new structure had yet to be formally approved by the President of the Republic and the Ministry of the Economy, but the Institute nevertheless already had its own staff and a budget which was currently approximately $4 million. The Institute worked closely with the Ministries of Social Development and Education, provincial institutes for indigenous affairs, indigenous associations and others. In addition to its own funds, it received funding from international bodies such as the Inter-American Development Bank (IADB), the European Union and the World Bank for financing assistance projects for specific communities or regions.

21. With regard to the recognition of the ethnic and cultural pre-existence of Argentina's indigenous peoples, she said that, in addition to recognition in the Constitution, there were various measures and programmes which provided for consultation with and the participation of indigenous peoples in areas which concerned them. Currently, one of the main objectives of the National Institute of Indigenous Affairs was to ensure that the coordinating council, on which all indigenous peoples from all regions would be represented and which had been created by Act No. 23302 on indigenous peoples, would begin operations. Approximately 90 per cent of the Institute's sustainable development projects were drawn up at the request of and with the participation of the indigenous communities themselves. Most programmes for the

regularization of property titles for lands inhabited by indigenous communities were also undertaken in consultation with indigenous associations. For example, in the Río Negro project, the entire technical team and the project coordinator were from the Mapuche tribe, one of the indigenous peoples most concerned by the project. Although the situation was not ideal and there were cases of major projects where the indigenous populations had not been, or not been sufficiently, consulted, as, for example, during the construction of the Nor Andino gas pipeline, the affected communities had since received compensation. It was, however, clear that the authorities must, to the greatest extent possible, seek the involvement of the indigenous peoples in question before entering into major infrastructure projects which would affect the environment.

22. Her Government clearly required reliable socio-economic information and statistics and the National Institute of Indigenous Affairs had already collected some useful information as a result of the enrolment of members of indigenous communities in the National Register of Indigenous Communities. Further information was also obtained from facts and statistics gathered in areas inhabited by indigenous populations. As a result, it had been learned that the infant mortality rate was much higher than the national average in regions inhabited principally by indigenous populations. Although there had been no census in 2000 due to budgetary problems, a census planned for the near future would provide a great deal of information, especially given that it would also include questions on self-identification with and belonging to indigenous communities.

23. In reply to questions on how Argentine institutions reconciled the indigenous community property system with individual property ownership, she said that the Constitution recognized the community possession and ownership of lands historically occupied by Argentina's indigenous peoples and stipulated that those lands were inalienable and could not be seized or transferred. Those provisions had been necessary because, in the past, indigenous lands had often been wrongly seized or bought cheaply. The public authorities were currently using purchase or expropriation procedures to ensure that lands historically occupied by indigenous peoples were returned to them and protected from real estate market speculation. Those constitutional provisions did not, however, prevent each of Argentina's 17 indigenous peoples from observing as they saw fit traditional methods for the exchange of land within a family or a community and the law did not exclude recognition of individually held indigenous land, as was the case, for example, in the province of Chubut, where Mapuche families were scattered throughout the province, but their land was nevertheless considered to be indigenous land and subject to the same regime as land belonging to that community. The National Institute of Indigenous Affairs was also developing programmes for the regularization of property titles for land inhabited by indigenous communities. Through various mechanisms and in liaison with provincial and municipal Governments, it was monitoring in particular the regularization of property titles for all public lands on which indigenous communities were living. The relative speed with which public lands were transferred to the indigenous peoples was affected by the political orientation of the provinces and municipalities.

24. The economic activity undertaken on indigenous lands varied from region to region and in accordance with the lifestyles of the indigenous populations and communities which traditionally revolved around raising livestock, agriculture or hunting. When lands were bought back or transferred, studies were undertaken to ensure that they would be used for sustainable

development and would be adequate for that purpose. However, a significant number of indigenous peoples no longer lived on their original lands and therefore no longer had any relationship with the land. Such considerations were all taken into account by the authorities, in consultation with indigenous organizations, when adopting any decisions. In that context, she noted that, with regard to the so-called "Pulmari" dispute, which was very complex and about which experts from the International Labour Organization (ILO) had expressed concerns, she said that the conflict had been settled thanks to the joint efforts of the National Institute of Indigenous Affairs and the indigenous communities involved, and a decision for expropriation had been taken.

25. In reply to the question on the criteria according to which indigenous communities were authorized to enrol in the National Register of Indigenous Communities, which allowed them to take advantage of preferential measures, she said that they simply had to submit a brief historical summary of their situation and their system of organization. No written document was required and they did not have to speak any particular indigenous language.

26. Turning to the right to bilingual and intercultural education, she said that efforts were under way to develop bilingual teaching, in particular at the primary level, and the National Institute of Indigenous Affairs was trying to have the school curriculum modified for that purpose, but that was a lengthy and complex task. Nevertheless, plans already existed to provide study grants to indigenous students. Lastly, she noted that certain indigenous cultural objects which had been in the keeping of national museums had been returned to their communities of origin in recognition of the right of indigenous communities to manage their own cultural heritage.

27. The CHAIRMAN invited the members of the Committee to make further observations following the replies provided by the delegation of the State party to their supplementary questions.

28. Mr. THORNBERRY recalled that the delegation had referred to the problems involved in repealing the provisions of article 25 of the Constitution relating to European immigration owing to the rigid abrogation procedure, but wondered whether it might nevertheless be considered that the other provisions of the Constitution and the decisions of the courts in fact cancelled out the effects of those provisions.

29. With regard to the high cost to immigrants of the formalities necessary to regularize their situation, he referred to a decision of the European Court of Human Rights in a case between an individual and the Republic of Ireland in which the Court had stated that insufficient support from the State for the realization of human rights could be an obstacle to the full enjoyment of those rights. He also wished to know whether the issue of the recognition of indigenous place names had given rise to a debate within Argentine society and inquired about the concrete effects of recognizing the pre-existence of the indigenous peoples.

30. Mr. de GOUTTES, noting that, in its replies, the delegation had indicated that the Argentine Government was deeply concerned about the fact that a very influential radio station in the country was spreading ideas of a racist nature, said that it would be useful to have more

precise information on the influence and audience of that information source. He also wondered what measures the Government was thinking of taking to reduce the negative influence of such media sources.

31. Mr. TANG Changuyang noted that the provisions of the international instruments ratified by States must be integrated into domestic legislation. Consequently, if that had not been done with some of the provisions of the Convention in Argentina's legislation, the State party must take measures to include them.

32. Mr. ABOUL-NASR said that it was never easy to reform a national constitution, but, considering the fact that some provisions of the Constitution had been amended, in particular within the framework of the 1994 reform, he was surprised that it was proving so difficult to amend article 25 of the Constitution, which gave preference to European immigration.

33. Mr. ZAFFARONI (Argentina) said that the provisions in question of article 25 of the Constitution were in practice obsolete and no longer applied. In fact, they had not been retained during the 1994 constitutional reform, not for ideological reasons, but because of a political decision, since the party in Government and the largest opposition party had agreed to make no amendments to the first 35 articles of the Constitution.

34. He added that his Government was aware of the problem posed by the high cost of regularization formalities for immigrants and was planning various measures to remedy that situation, in particular within the framework of the law on immigration which should be promulgated in the near future.

35. With regard to the hierarchy of the various legal texts in force in the country, he said that the Constitution and the international human rights conventions incorporated in the Constitution were the highest law of the land and therefore took precedence over all other legislation in force. After the Constitution came the other international conventions which had been ratified by Argentina and which took precedence over national laws. Then there were the federal or national laws, which could not be in contradiction with higher laws. However, he noted that the provisions of international instruments ratified by Argentina constituted domestic legal standards only on the condition that the required implementation texts had been promulgated, in particular in criminal matters. Lastly, he said that the criminal legislation in force since 1988 allowed for effective punishment of persons who committed offences defined in the Convention.

36. He explained that the radio station mentioned by several members of the Committee, which had a very large audience in the country because of its popular music programming, avoided breaking the law against openly advocating racial superiority by choosing instead to refer to a "silent invasion". It did not make openly racist statements, but, rather, provided tendentious or incorrect information about immigrants or foreigners, in particular falsely characterizing them as unfair competitors for Argentine workers and major causes of crime and lack of security. Given the country's past history of a long period of information control, his Government was trying to settle that problem without hampering the free exercise of the right to inform, be informed and to criticize, freedoms which were essential for democracy.

37. Ms. GONZALEZ (Argentina) said that the radio station in question was taking advantage of the difficulties involved in adopting specific measures to suppress the dissemination of ideas deemed to be in violation of the Convention, without damaging social coexistence.

38. With regard to the ethnic and cultural pre-existence of Argentina's indigenous peoples mentioned in the report (para. 37), she said that the 1994 constitutional reform had radically changed the concept of national State and the attitude towards the indigenous peoples, who until then had been discussed only in the context of issues involving borders, security, peaceful relations and religious conversion. Article 67 of the Constitution had radically changed that situation by recognizing the ethnic pre-existence of the indigenous peoples and the nation's cultural diversity, as well as the concepts of community property and the legal personality of indigenous communities, new concepts which had required major legislative reform. Consequently, in 2000, a commission to evaluate and review the reform of the Civil Code and the Commercial Code had recommended that indigenous peoples and experts on indigenous-related legislation should be involved in the legislative reform process under way. She stressed that the indigenous peoples were insisting that their ethnic and cultural pre-existence as the first inhabitants of the country before the conquest, colonization and the creation of the national State should be recognized. Recognition of the concept of original people likewise implied changes which affected legislation, institutions and the future character of Argentine society itself. In that context, IANI had recommended that an evaluation and follow-up commission made up of indigenous representatives, experts, researchers and jurists, should be created with a mandate to define a national and local legal framework for land-related matters.

39. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) expressed satisfaction that consideration of the report of Argentina had given rise to a particularly constructive, frank and exhaustive dialogue between the Committee and the Argentine delegation, which had highlighted the positive aspects of the implementation of the Convention in Argentina, as well as related difficulties.

40. Turning to positive aspects, he said the Committee wished to express its satisfaction with the fact that the Convention had equal status with the Constitution in Argentina's domestic legislation and that the provisions of article 25 of the Constitution were no longer applied. The Committee had received copious information from the delegation, particularly encouraging information with regard to the transfer of lands and the desire to obtain socio-economic data in order to better evaluate the current situation of the indigenous peoples.

41. He welcomed the fact that the Argentine Government had shown a desire to ensure that indigenous peoples participated fully in the political and community life of the country and suggested that the Committee should be provided with further information in that regard in future periodic reports.

42. As to article 4 of the Convention, he had taken note with satisfaction of the information provided on the scope of Act No. 23592 of 21 August 1988, which increased the penalties under the Penal Code for offences having an ethnic or racial motivation, as well as of the establishment within the Ministry of Justice of a commission to incorporate provisions which reflected

Argentina's commitments under international human rights instruments into criminal legislation. He hoped that the Argentine Government would keep the Committee informed of the results of that commission's work.

43. The Committee had taken note with interest of the information provided on the judicial inquiry conducted following the attacks against the Embassy of Israel in Argentina in 1992 and against the offices of the Argentine Israelite Mutual Association (AMIA) in Buenos Aires in 1994, of the explanation that the lack of information in the report on persons of African origin was due to historical reasons and of the information that, although racism existed in Argentina, there was no organized racist movement, it also recognized that the radio station programmes in question did not constitute openly racist propaganda and therefore did not violate the law. The adoption in the near future of a comprehensive immigration act would be a welcome step and should contribute to implementation of the Convention in Argentina.

44. The CHAIRMAN thanked Mr. Valencia Rodríguez for his useful and pertinent observations on the report of Argentina and expressed his sincere thanks to the Argentine delegation for the fruitful and constructive dialogue it had maintained with the Committee during the consideration of the fifteenth periodic report of Argentina.

The meeting rose at 12.45 p.m.

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Fifty-eighth session

SUMMARY RECORD OF THE 1441st MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 7 March 2001, at 3 p.m.

Chairman: Mr. SHERIFIS

later: Mr. RECHETOV
(Vice-Chairman)

later: Mr. SHERIFIS
(Chairman)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Fifteenth and sixteenth periodic reports of Iceland (CERD/C/338/Add.10; CERD/C/384/Add.1; HRI/CORE/1/Add.26)

1. At the invitation of the Chairman, Mr. Bogason, Ms. Thorarensen, Mr. Jónsson and Ms. Davidsdóttir (Iceland) took places at the Committee table.

2. Ms. THORARENSEN (Iceland) said that the influence of human rights treaties on the Icelandic legal system had increased significantly since the far-reaching amendments to the human rights chapter of the Constitution in 1995. Although the treaties were not directly enforceable in the Icelandic legal system, the Supreme Court and other courts frequently referred to them when applying and interpreting Icelandic law. For example, in a recent judgement recognizing the existence in Iceland of substantive social rights, the Supreme Court had cited the International Covenant on Economic, Social and Cultural Rights in conjunction with article 65 of the Constitution. Although the issue of racial discrimination had not yet been raised before the courts, it was generally recognized that the Constitution now provided comprehensive legal protection in that area. People in Iceland were better informed of their rights than ever before and knew that they were enforceable through the Icelandic legal system and international monitoring bodies.

3. Iceland had signed and would shortly ratify Protocol No. 12 to the European Convention on Human Rights, which prohibited discrimination on grounds of race, colour, descent, national or ethnic origin and various other grounds. A new comprehensive bill on aliens had been submitted to Parliament in autumn 2000. Replacing the 1965 Aliens Act, it would secure the right of foreigners to reside in Iceland or to apply for permits, the right of asylum, and the right of refugees and others to protection against persecution.

4. In its concluding observations on the fourteenth periodic report of Iceland (CERD/C/304/Add.27), the Committee had suggested that further publicity be given to Iceland's declaration under article 14. The Convention had been widely publicized and was accessible to all. It formed part of the constitutional law curriculum for university students and was a compulsory part of the course for students at the Icelandic Police College. Training courses in human rights covering all the international human rights treaties were now being provided for public officials, including judges, prosecutors, and police and customs officers. Iceland's reports and the Committee's concluding observations were distributed to the media and Icelandic human rights monitoring bodies and published on the Internet. The Ministries of Justice and Foreign Affairs contributed 6 million Icelandic kronur each year to the Icelandic Human Rights Centre. The Ministry of Justice had distributed human rights material, including a poster of the Universal Declaration of Human Rights, to official institutions. As no application for protection against racial discrimination had been filed with the administrative authorities, the Ombudsman or the courts, the authorities had made no special effort to publicize the remedy available under article 14 of the Convention which required that domestic remedies should first have been exhausted.

5. With regard to article 4 of the Convention, section 180 of the General Penal Code made it a punishable act for a business or service operator to refuse to sell goods or services to a person on grounds of nationality, colour, race or religion. Section 233 (a) made it an offence to attack a person or group of persons in public by mockery, slander, insult, threats or other means on grounds of nationality, skin, colour, race or religion. Article 74 of the Constitution provided for the dissolution of associations whose purposes or methods were unlawful, a provision that would undoubtedly be applicable to an association advocating racial discrimination. The authorities were concerned, for example, by the activities of the Association of Icelandic Nationalists, a small group of young people who believed in the superiority of the Icelandic race and opposed any mixing with other races. They propagated their ideas mainly through an Internet Web site. Although the public response had generally been one of censure and disparagement, the authorities took the threat seriously. A recent interview in a major Icelandic newspaper, in which the leader of the group had made degrading comments about coloured people, had led to a heated public debate, particularly regarding media responsibility, and Parliament had discussed whether article 233 (a) of the General Penal Code had been violated. The Director of Public Prosecutions was considering whether to take action and a police investigation would probably be initiated.

6. Mr. BOGASON (Iceland) said that a number of measures had been taken in response to the Committee's recommendation concerning article 7 of the Convention. The revised curriculum for nursery and primary schools introduced in mid-1999 focused on the promotion of tolerance. The curriculum for nursery schools was also designed to promote personality development regardless of mental or physical abilities, sex, origin, cultural heritage or religion. Children from other cultures were encouraged to become active participants in their new society without losing their ties to their own culture, language or religion. In general, the children were taught to respect the customs and characteristics of all nations of the world. The primary school curriculum provided for tuition in the Icelandic language for pupils with other native languages so that they could participate fully in Icelandic schoolwork and society.

7. The Information and Cultural Centre for Foreigners in the city of Reykjavik catered for immigrants and other foreigners residing in Iceland, offering children native language tuition in Chinese, English, Japanese, Portuguese, Russian, Thai and other languages as required. It also organized activities designed to eradicate prejudice against people of different race or origin. A Committee on Multicultural Society had recently published a report setting forth a policy on the promotion of tolerance towards foreigners. The Cultural Centre would shortly be replaced by an International House supported by all municipalities in the Reykjavik area. A centre for immigrants had been established in the Western Fjords, an area with a particularly large immigrant population. The purpose of the centre, which would start operating later that month, was to facilitate relations between Icelanders and foreign nationals, to cooperate with the municipal authorities in providing services to foreigners and to facilitate their adaptation to Icelandic society. The Ministry of Social Affairs had published a booklet in July 1998 on the rights and duties of foreigners in Iceland, together with practical information on Icelandic society and law and on the most important institutions.

8. The Icelandic Government had decided in July 2000 to ratify the amendment to article 8, paragraph 6, of the Convention. The ratification document, dated 1 August 2000, would be deposited later that month.

9. Mr. LECHUGA HEVIA (Country Rapporteur) welcomed the adoption by Iceland of sections 180 and 233 (a) of the General Penal Code. Article 74 of the Constitution, which protected freedom of association, provided for the dissolution of associations considered to have unlawful objectives. But article 4 of the Convention made no mention of unlawful objectives; it required States parties to condemn all propaganda and all organizations based on ideas or theories of superiority of a particular race, to declare an offence punishable by law all dissemination of ideas based on racial hatred and to declare illegal and prohibit such organizations. According to the Icelandic Human Rights Centre, no public official or politician had made any statement concerning the activities of the Association of Icelandic Nationalists mentioned by the delegation. Article 4 was a key provision of the Convention and strict compliance with its letter and spirit was essential.

10. He welcomed the fact that individuals whose rights had been violated could seek legal redress and obtain damages, moral compensation and annulment of administrative decisions. He further welcomed the protection provided by article 65 of the Constitution, as described in paragraph 16 of the fifteenth periodic report (CERD/C/338/Add.10). Another positive step was the abolition of the requirement for a foreigner to assume an Icelandic name on acquiring Icelandic citizenship.

11. He noted that, despite the Committee's recommendation in its concluding observations on Iceland's fourteenth periodic report (CERD/C/304/Add.27), the Convention had not yet been incorporated in Icelandic domestic law. He reiterated the Committee's comment that conferring constitutional status on the Convention would enhance its effectiveness by providing for direct domestic application.

12. According to paragraph 29 of the fifteenth report, no civil or criminal cases concerning racial discrimination had been brought before the courts in recent years and neither the Ombudsman of the Althing nor the Children's Ombudsman had received any complaints of that nature. As the Convention and the Committee's concluding observations were, by all accounts, well publicized, the absence of complaints could not be ascribed to lack of awareness, except perhaps among immigrants who were not familiar with the Icelandic language. It was a point that the delegation might be able to clarify. The language barrier was clearly a problem for all immigrants and it would be interesting to have a full account of the recommendations made by the committee referred to in paragraph 7 of the fifteenth periodic report. According to the Icelandic Human Rights Centre, the Information and Cultural Centre for Foreigners in Reykjavik often received complaints from foreign residents of harassment by private individuals. In the case of Asian women, such threats were allegedly almost always of a sexual nature and the police could not be relied on to respond to complaints.

13. He gathered from the delegation's statement that the bill on foreigners referred to in paragraph 6 of the fifteenth report had not yet been enacted. He welcomed the information given on the requirements for obtaining citizenship and for the adoption of foreign children by Icelandic citizens. However, according to the Icelandic Human Rights Centre, there was an urgent need to clarify the status and rights of foreigners in order to prevent racial discrimination.

14. He would be interested to hear what action had been taken on the reform proposals made by the committee established to formulate an overall policy on immigrants referred to in paragraph 5 of the sixteenth report. He would also welcome information about infant mortality and morbidity and life expectancy among immigrants. How did the figures compare with those for Icelandic citizens?

15. He asked whether the new curricula for nursery and primary schools had already achieved any practical results. According to paragraph 8 of the sixteenth periodic report, secondary school students with limited knowledge of the Icelandic language were entitled to tuition in Icelandic, but the educational adviser on bilingual education in Reykjavik considered that bilingual students did not receive sufficient education either in Icelandic or in their mother tongue, so that they had difficulties in finding employment. Apparently, only 10 per cent of bilingual children went on to secondary education after completing compulsory education. Moreover, disparities in budget appropriations as between administrative regions allegedly resulted in discrimination among children in the area of education.

16. He was pleased to hear that the centre for immigrants in the Western Fjords would shortly commence its activities. Other positive developments were the amendment of the legislation so that the child of an unmarried foreign woman living in Iceland would acquire Icelandic nationality and the granting of citizenship to stateless children born in Iceland. He further noted that the law requiring the leaders of religious associations to be Icelandic citizens had been revoked. Lastly, he asked the delegation to comment on reports that foreigners, particularly women, were paid low wages in Iceland, regardless of their level of education.

17. Mr. Rechetov, Vice-Chairman, took the Chair.

18. Mr. de GOUTTES commended the punctual submission of Iceland's periodic report. There was much to be commended in the fifteenth and sixteenth periodic reports, including the news that Iceland had made the declaration under article 14 of the Convention. It showed that the complaints procedures available under the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention on Human Rights, to which Iceland was also signatory, were complementary. However, pending the implementation of Protocol No. 12 to the European Convention on Human Rights, which Iceland had also signed, the complaints procedure under the International Convention remained broader in scope. Other positive developments included the Personal Names Act and amendments to the General Penal Code.

19. He noted with satisfaction that, in response to the Committee's previous recommendations, the periodic reports provided details on the Icelandic Nationality Act as well as useful statistics on the ethnic composition of the population. Also praiseworthy were the Government's efforts to disseminate information on the State party's periodic reports. He asked the delegation to provide further information on the progress and contents of the Bill on Aliens in Iceland recently submitted to Parliament.

20. According to the Icelandic Human Rights Centre, a non-governmental organization (NGO), notwithstanding the 1996 amendments to the General Penal Code some lacunae remained in Icelandic legislation with respect to article 4 of the Convention, specifically the

absence of a ban on racist organizations. Although the matter was touched upon in paragraph 30 of the sixteenth periodic report, he would nonetheless appreciate some further clarification. With regard to article 5 of the Convention, it was also alleged by the NGO that the right to education was not fully guaranteed for bilingual children. With reference to article 6, he expressed disappointment that to date apparently no criminal or civil cases concerning racial discrimination had been brought before the Icelandic courts. That was of particular concern in view of the activities of the Association of Icelandic Nationalists, which, though still relatively small, was clearly attracting increasing media attention. He would welcome more information on the police inquiry and parliamentary debate on the matter.

21. Mr. BOSSUYT welcomed the new Personal Names Act, which would bring Iceland's legislation into line with that of other States parties. He also noted with satisfaction that Iceland was one of the few countries which during the previous 10 years had taken in refugees on a regular basis. Apparently there were very few requests for asylum; more information in that respect would be welcome.

22. According to the statistics provided in the report, the foreign population was still relatively small (approximately 2.6 per cent), but with a high concentration in the Western Fjords area. It was interesting to note that the largest group of recent immigrants was of Polish origin. What were the reasons for that and were they illegal or legal immigrants? What criteria did the latter have to meet under Iceland's immigration policy? A further positive development in that connection was the incorporation of the principle of equality before the law in the Constitution.

23. The Icelandic Nationality Act seemed rather complex. Was it possible for foreign nationals to acquire Icelandic citizenship without relinquishing that of their country of origin? According to the information provided, the reverse was not possible for Icelandic citizens. He was also somewhat perplexed by the conditions for the release from Icelandic citizenship described in paragraph 13 (iii) and sought clarification in that regard. In conclusion, he welcomed the amendments to sections 180 and 233 (a) of the General Penal Code.

24. Mr. THORNBERRY asked for more information on support given to bilingual children. Paragraph 6 of the sixteenth periodic report referred to assisting children at nursery school level in becoming active participants in their new society without losing ties with their own culture, whereas according to paragraph 7 the emphasis in primary education seemed to be on teaching in the Icelandic language. How was that reflected in the national curriculum? Was the overall intent to provide monolingual rather than bilingual education? He realized that, given the small number of foreigners in the country, the demand for the latter was not high; nevertheless it could have great benefits in present-day society. As to teaching the promotion of tolerance, was it focused on groups that really existed in Iceland or was it more abstract in approach?

The meeting was suspended at 4.15 p.m. and resumed at 4.20 p.m.

25. Ms. THORARENSEN (Iceland) said that the Country Rapporteur had provided an accurate picture of the situation in Iceland. Responding to his questions and comments, she said that there was widespread concern about the Association of Icelandic Nationalists, in particular following the interview given by the group's leader published in the Icelandic press on

17 February 2001. There had been prompt reaction to it by the authorities. The Director of Public Prosecutions was in the process of ordering a police inquiry to ascertain to what extent the Association was organized and whether there might be a case for a violation of article 233 (a) of the General Penal Code. In the affirmative, steps would be taken in accordance with the Constitution to ban the association and take criminal action against the persons responsible for it. The Committee would be kept abreast of any notable developments. As to the reference to the failure of the authorities to condemn the association, the matter had been a subject of broad-ranging debate in Parliament. It was a new and unwelcome problem for Iceland which would be taken seriously.

26. The only international human rights instrument that had been incorporated into Icelandic legislation was the European Convention on Human Rights and that had been done in 1994 prior to the extensive amendments to the Constitution. However, the basic principles set forth in the United Nations human rights instruments were enshrined in the amended Constitution and interpreted with direct reference to them. A good example was the International Covenant on Economic, Social and Cultural Rights, which was specifically mentioned in the constitutional provision relating to the right of individuals to social benefits. In recent years such international treaties had had considerable influence on the application of Icelandic law and that trend was likely to continue. If a case on racial discrimination was brought before the Icelandic courts, the International Convention on the Elimination of All Forms of Racial Discrimination would undoubtedly be invoked. So it could be said that the Convention enjoyed similar status to that of the Constitution, since it was based on the principles enshrined in that instrument.

27. The Convention had been translated into Icelandic in 1996 and published in the General Law Collection together with the Constitution and other human rights instruments. The Convention, Iceland's periodic reports and the Committee's concluding observations and recommendations thereon had also been posted on the Internet - a very powerful and extensively used medium in Iceland. Relevant information had also been disseminated to the Icelandic media. There had been an increase in public awareness about human rights issues in recent years.

28. Regarding the remedies available to victims of human rights violations, Icelandic citizens frequently brought petitions before the European Court of Human Rights. Perhaps its popularity distracted attention somewhat from the complaints procedures under the United Nations human rights instruments, although some Icelandic citizens had availed themselves of the procedure under the International Covenant on Civil and Political Rights. She was confident that the general public had sufficient information to seek remedies through the other instruments if necessary.

29. She had no knowledge of the frequent complaints reportedly addressed to the Information and Cultural Centre for Foreigners about racist acts and general harassment against foreigners by Icelandic nationals. At least no formal complaints had been made to the police along those lines. The only possible case of racial discrimination currently pending was that taken up on the personal initiative of the Public Prosecutor following the degrading comments about coloured people made by the leader of the Association of Icelandic Nationals in his press interview. The Icelandic authorities were doing their best to inform foreigners of their rights, who were guaranteed access to the police and the necessary support in the event of possible civil action.

30. Mr. BOGASON (Iceland) said that the Bill on Aliens to update the 1965 Aliens Act had been before Parliament since autumn 2000 and was expected to be passed the following spring. The comprehensive draft legislation outlined the rights and duties of foreigners residing in Iceland and also contained provisions on the granting of permits and visas, the protection of refugees and asylum-seekers, and border controls.

31. Many of the proposals put forward in the report issued in June 1997 by the Government-appointed committee to formulate an overall policy on immigration in Iceland had already come into effect. They included the new curricula for nursery and primary schools and other support measures such as the centre for immigrants to be opened shortly in the Western Fjords area where there were large numbers of immigrants.

32. Ms. THORARENSEN (Iceland) admitted that the general tendency in Iceland for women - especially foreigners - to hold lower paid jobs than men persisted. In the case of foreigners, it was linked to their inability to speak Icelandic, which reduced their chances on the labour market. Accordingly, one of the many measures that both the central Government and the local authorities were taking to enhance their situation was support for language courses for such persons.

33. Responding to Mr. de Gouttes' question concerning the applicability of article 4 of the Convention to legal proceedings that would ensue from a particular case of a racist association, she said that there were as yet no clear examples. The first "test" case was under police investigation; if it revealed that the specific objective of the Association of Icelandic Nationalists was to propagate the idea of Icelandic racial superiority and expound racist views, the authorities would do all in its power to disband it, as provided for in the Constitution. Steps would be taken to amend the legislation if it were found to be inadequate. In any event, detailed information on the outcome of the case would be furnished in the country's next report.

34. Referring to the Icelandic Human Rights Centre's allegation that education was not guaranteed on an equal basis for bilingual children, she said that there was a plethora of nationalities living in Iceland, some comprising one or two persons. She could not guarantee that Iceland's policy was to provide bilingual primary education for them all in the foreseeable future, although the Government and the Reykjavik community was encouraging that endeavour. Support was being given to larger groups to help them study Icelandic as well as their native language. One problem the authorities faced was the existence of families in which the parents spoke to their children and to each other in poor English, so that the children learned neither Icelandic nor their mother tongue. The Information and Cultural Centre for Foreigners in Reykjavik was already playing an important role in that regard.

35. Mr. de Gouttes was right in saying that no case had as yet been prosecuted under section 233 (a) of the General Penal Code, although one was at the pre-trial stage. It was true that there were few foreigners in Iceland, but the numbers were increasing, with a current 7 per cent in the Western Fjords, where a multicultural society was beginning to thrive, with the help of its own inhabitants and the authorities alike.

36. Mr. BOGASON (Iceland) said that Danish immigrants had currently been surpassed in number by Poles who went to Iceland to seek work and lived there legally.

37. Mr. BOSSUYT asked what criteria the Government applied to enable Poles to reside legally in Iceland and whether all other nationalities were equally welcome.

38. Ms. THORARENSEN (Iceland) said that Poles were in great demand as workers in the recent building boom in Iceland, which, having low unemployment, had never been plagued by the problem of foreigners depriving nationals of work. Icelandic companies advertised in Poland; Poles sought and were issued with work permits, and were highly respected in Iceland. Some did return to Poland after a time, but many stayed on, marrying either Polish or Icelandic women, and becoming well integrated. The former common Nordic single-nationality policy had been amended and, under the current system of dual nationality, foreigners were not required to relinquish their nationality if they became Icelandic citizens. The Government would supply fuller details in its next report.

39. Replying to questions asked by Mr. Thornberry, she said that children of foreign origin were encouraged to learn their own language before embarking on the study of Icelandic. Immigrants could be taught both their native language and Icelandic at the new International House. On the subject of education for tolerance, it was established as a matter of policy in the curriculum. In addition, primary schools offered a course in life and society, teaching children about other peoples and other religions in an effort to promote tolerance. Since no major clashes or specific cases of intolerance had been reported, it was not a topic dealt with through the law enforcement system, but in a more abstract manner.

40. Mr. BOSSUYT requested further clarification of the dual-nationality issue. He considered it discriminatory that while foreigners did not lose their original nationality upon becoming Icelandic citizens, section 7 of the Nationality Act stipulated that an Icelander acquiring a foreign nationality must do so.

41. Ms. THORARENSEN (Iceland) explained that, to the best of her knowledge, that was the case if an Icelander actively sought a second nationality. However, the legislation was 50 years old, and might have been changed. She would make sure that updated information was provided to the Committee in Iceland's next report. What was certain was that the Constitution afforded protection to Icelanders who, for one reason or another, such as marriage, acquired a second nationality without actively seeking it. In conclusion, she thanked Committee members for their positive comments, assuring them that responses to their concerns would be reflected in Iceland's future reports.

42. Mr. LECHUGA HEVIA (Country Rapporteur) commended the delegation's detailed replies which supplemented the comprehensive reports and amply reflected the positive process under way to eliminate racial discrimination. Although article 4 of the Convention had not been fully incorporated into Icelandic law, the delegation had assured the Committee that a judicial process was under way to remedy the situation, and that it was already pursuing one allegedly racist organization. He appreciated the delegations' clarifications concerning the rights of immigrants, and hoped that the next report would provide further information on the law shortly to be enacted in that regard, and on the other bills mentioned in the sixteenth periodic report.

43. The CHAIRMAN associated himself with Mr. Lechuga Hevia's positive remarks and his appreciation of the fruitful and constructive dialogue between the Committee and the delegation.

44. The delegation of Iceland withdrew.

Review of the implementation of the Convention in States parties whose reports are excessively overdue

Jamaica

45. Mr. RECHETOV said that Jamaica had last submitted a report in 1985. In 1993, the Committee had considered the situation in Jamaica without a country report but with the participation of a representative of that country, who had provided some information. If the Committee was to consider the situation in Jamaica without a country report, it must ascertain whether or not Jamaica would be sending a representative.

46. The CHAIRMAN said that the Permanent Mission of Jamaica would be contacted to ascertain whether it intended to send a representative on either 8 or 13 March. If it did, the situation in Jamaica would be taken up on one of those dates. If it did not, the Committee would hold its discussion on the next day, i.e. 8 March.

47. It was so agreed.

Lao People's Democratic Republic

48. Mr. de GOUTTES said that the Committee needed to decide how it would respond to the letter from the Lao People's Democratic Republic - for which he was the Country Rapporteur - requesting postponement of consideration of its report. The letter referred to a United Nations Development Programme (UNDP) cooperation project that would help the Government prepare the report. While acknowledging that the Lao People's Democratic Republic was very poor and was facing social and political difficulties, the letter did not specify a new date for submission, as the Committee required.

49. The CHAIRMAN said that, if the Committee accepted the request for a postponement, the earliest possible date for consideration would be March 2002, which meant that the Lao People's Democratic Republic must submit the report by the end of January.

50. Mr. RECHETOV agreed that the report should be requested by that date. If the Lao People's Democratic Republic did not comply, the Committee would then consider the situation there without a report. Meanwhile, in view of the difficult situation in that country, the Committee should be flexible and grant a postponement.

51. Mr. de GOUTTES noted that the previous report had been submitted in 1984 and considered in 1985. Since then, the Committee had considered the situation in that country in 1992 and in 1996 without a report. Another solution might be to give a brief presentation of the situation on the basis of other United Nations reports so as to draw attention to questions that might be covered in the next periodic report.

52. Mr. RECHETOV said that that solution was acceptable.

53. It was so agreed.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Periodicity of consideration of States parties' reports

54. The CHAIRMAN invited the Committee to discuss the problem that arose from the fact that it was sometimes called upon to consider the report of a State party only months before its next report was due. Did the Committee wish to conform strictu sensu to the provisions of article 9 of the Convention, to the effect that a State party must report to the Committee every two years? Or would it prefer to apply a formula whereby a country that had submitted its fifteenth report, for example, would be excused from submitting the sixteenth, on the grounds that the sixteenth was an updating report, thereby giving that country two more years?

55. Mr. BOSSUYT suggested that, given the number of reports still pending consideration by the Committee and the pressure of time, it could be suggested that Iceland, for instance, might wish to submit its seventeenth and eighteenth reports together.

56. Mr. de GOUTTES, endorsing Mr. Bossuyt's view, said that the Committee had taken the logical decision to allow States parties that were late in submitting their reports to submit a single report comprising all overdue reports, on the grounds that a State party that had produced a good report should be given more time to submit the following one. That was not being done in practice, since reference continued to be made in the Committee's concluding observations to the need to adhere to the formal timetable, which was unwise.

57. The CHAIRMAN said he had raised the question early in the session precisely in order to determine how other States parties submitting reports at the present session should be treated.

58. Mr. DIACONU said that most States parties presented merged reports every four years. If all States parties reported every two years, the Committee would be swamped and unable to perform its task. Fortunately, countries adapted to the Committee's time pressures and vice versa. While he could accept Mr. Bossuyt's suggestion, the Committee could hardly claim that Iceland had presented its seventeenth report in March when it was due to do so in May. It could make suggestions to a State party, but could not decide to change a fixed timetable. What was needed was more regular consideration of reports from countries with serious racial discrimination problems.

59. Mr. RECHETOV said that if the Committee altered the procedure for submitting reports, it might be opening Pandora's box. The Committee should consider the reports as it saw fit, and it must insist that reports be submitted in keeping with the Convention's requirements. If States that already had a poor reporting record had the impression that the Committee was straying from the Convention, they might stop submitting reports altogether.

60. The CHAIRMAN asked Mr. Bossuyt to produce a version of his proposal that would do justice to the Convention, the States parties and the views of the members of the Committee.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 11) (A/CONF.189/PC.2/12, A/CONF.189/WG.1/3)

61. Ms. McDOUGALL reported to the Committee on the meeting of the inter-sessional working group, which had begun the day before at the Palais des Nations. The working group had had before it the documents produced in the regional preparatory committees and a draft declaration and programme of action (A/CONF.189/WG.1/3) drawn up by the secretariat of the World Conference. There had been a general debate, and the intention had been that it would be followed by a line-by-line analysis and editing of the secretariat's text, which was to become the document presented at the second Preparatory Committee meeting in the last two weeks of May and, later, the document to be adopted at the World Conference in early September. Meetings were scheduled throughout the week, with a conclusion of deliberations set for Friday afternoon.

62. In the open debate the day before, countries from the African, Asian and Latin American groups had expressed general and profound disagreement and dissatisfaction with the secretariat's draft document, which, they had argued, reflected little if any of the language or ideas negotiated at the four regional conferences. Given the efforts made at the regional preparatory meetings as well as at a number of meetings of experts around the world, it was unacceptable that the body should start from what in essence would be a blank slate. The three regional groups had then recommended that the secretariat draw up a compilation of each of the regional documents issue by issue to serve as a basis for further debate and the preparation of a composite document. That proposal had been put forward earlier in the day. Considerable discussion had ensued, and the whole process had more or less broken down: an hour earlier, the meeting had again been suspended for consultations and dissatisfaction had been such that there had been talk of cancelling all remaining meetings.

63. During the deliberations, she had made a comparison between the document presenting the Committee's contribution to the preparatory process for the World Conference, drawn up by Mr. Valencia Rodriguez, and the secretariat's draft declaration and programme of action; much left to be desired in the secretariat's document, which referred to numerous international instruments, but gave little attention to the Convention, mentioning it only once in passing in the preamble and very briefly elsewhere. She therefore urged the Committee to remain engaged and to participate fully in every stage of the discussions.

64. Mr. de GOUTTES said that those comments gave cause for concern. It was particularly regrettable that the Committee and the Convention had had so little impact on the drafting of the declaration and programme of action, whereas their impact had been very noticeable at the regional meetings. For example, the final document produced at the regional conference in Strasbourg had been greatly influenced by the Committee's recommendations. It would be useful for the Committee to have a report of the discussions at those regional meetings, which might give a different picture of developments from the one just heard.

65. Mr. YUTZIS said that the situation described by Ms. McDougall was disquieting. He had the impression that the inter-sessional meeting was deadlocked. At the first Preparatory Committee meeting, the Convention had hardly been mentioned, whereas at the regional meetings the Convention and the Committee had been given considerable attention. It was important for the Committee to exert a positive influence on future work.

66. The CHAIRMAN noted that in the document produced at the Asian regional meeting there had been a paragraph on the Convention and, in her statement, the High Commissioner for Human Rights had made a point of referring to the Convention and the Committee. She had also written to the Committee commending it for its contribution to the World Conference and its efforts in the global fight against racial discrimination.

67. Ms. McDOUGALL referred to the report of the Committee's Contact Group, which contained all the recommendations about strengthening the Committee's contribution. In addition to what was contained in the paper on the Committee's contribution, it should also be made clear which of the Contact Group's recommendations the Committee endorsed for enhancing its efforts.

The meeting rose at 6.05 p.m.

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Fifty-eighth session

SUMMARY RECORD OF THE 1442nd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 8 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Review of the implementation of the Convention in States parties whose reports are excessively overdue

1. The CHAIRMAN invited the Committee to review the implementation of the Convention in two countries, Togo and the Lao Democratic People's Republic, and gave the floor to the Country Rapporteur for Togo.

Togo

2. Mr. DIACONU (Country Rapporteur) said that, in a letter addressed to the Secretary-General of the United Nations, the Minister of Justice of Togo said that Togo was behind in the submission of periodic reports because there had been no structure for the preparation of reports since 1996 and it had been impossible for the Inter-ministerial Commission set up in 1997 to begin its work on account of serious material and financial problems. The Minister explained that periodic reports would be prepared and submitted to the Committee as soon as the socio-economic situation permitted and requested the Committee to take account of the reasons which had been given. A copy of the thematic report which had been sent to the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance had been attached to that letter. The thematic report contained the replies of the Government of Togo to the questionnaire sent to the Member States of the United Nations. It should be noted that those replies could also have been sent to the Committee. The Committee had already had to consider the implementation of the Convention in Togo in the absence of a report and a delegation in August 1996 and had decided at that time to remind the Government of Togo of its treaty obligations by inviting it to resume the dialogue.

3. Even though the submission of Togo's last periodic report to the Committee dated back to 1991, a number of documents, including the reports submitted to other treaty bodies, the concluding observations of those bodies and the report of the International Commission of Inquiry for Togo, which had been established in 2000, gave an idea of the situation. It should thus be recalled that the population of Togo was composed of about 40 ethnic groups, the largest of which were the Ewé in the south and the Kabyè in the north. Although the Constitution was in conformity with the Convention and guaranteed the fundamental rights provided for in the instruments ratified by Togo, no law had been adopted to punish acts based on racial or ethnic discrimination, which was not characterized as a crime in the Penal Code. Legal protection against discrimination was thus very limited in Togo.

4. The replies to the questionnaire sent to the Preparatory Committee for the World Conference was stated and repeated that Togo had no problems with minorities, since no ethnic group could be characterized as dominant, and that there had never been any racial or ethnic tension. He stressed that that argument had never been accepted by the Committee. Moreover, the core document submitted in 1996 (HRI/CORE/1/Add.38/Rev.1) referred to inter-ethnic

disturbances during the transition period and attempted incitement to racial hatred, which had led to people taking the law into their own hands in towns and villages. The Human Rights Committee had noted in 1994 that soldiers were nearly all recruited among the members of a single ethnic group, namely, according to the note by the Secretary-General addressed to the Committee on the Rights of the Child, the Kabyè group, to which the President of Togo belonged. The Human Rights Committee had recommended that the Government should remedy that situation and continue the process of national reconciliation. According to non-governmental organizations, the Kabyè occupied a dominant position in trade and in all professions. NGOs also reported that ethnic tensions in the north and in the south had forced minority ethnic groups to flee to neighbouring countries.

5. In its report, the International Commission of Inquiry for Togo, whose mandate was to verify allegations of extrajudicial executions made by Amnesty International, showed that such acts might have been committed in 1998 and implicated the Prime Minister, who had allegedly encouraged militia members who backed the Government in power to carry them out. It recommended the establishment of a new team of experts to check the functioning of aircraft from which the bodies of the victims of those executions had probably been thrown into the sea and had been found on the Togolese and Beninois coasts, to establish a team of forensic physicians and to appoint a special rapporteur on the situation of human rights in Togo. The Togolese Government had questioned the content of the report of the Commission of Inquiry and the objectivity of its members.

6. The available documents on Togo showed that the most serious problems were linked to political instability and the lack of a democratic regime, as well as to the general human rights situation, which was characterized by various types of violations, such as torture, extrajudicial executions and enforced disappearances, the consideration of which was not within the Committee's jurisdiction. The Committee might request the State party to resume the dialogue with it and use the advisory services of the United Nations to prepare its report. The replies to the questionnaire and the comments made on the report of the Commission of Inquiry showed that it was able to prepare such a document.

7. Mr. MACDARROW (Secretary of the Committee), replying to a request for further information by Mr. Aboul-Nasr, said that Togo did not have a permanent mission in Geneva, but did have an embassy in Paris. The secretariat had sent Togo the usual invitation to be present during the Committee's consideration of its situation and had tried many times to contact an embassy official, but without success.

8. On the basis of a suggestion by Mr. ABOUL-NASR and following an exchange of views in which Mrs. JANUARY-BARDILL and Mr. THORNBERRY took part, the CHAIRMAN said that the Committee would now request States parties to include a country map in their core documents describing the distribution of ethnic groups, as well as a map of the region where the country was located.

9. Mr. de GOUTTES said it was regrettable that the Togolese Government was so far behind in the submission of its report, particularly as a seminar had been organized in Lomé in 1996 by the Centre for Human Rights to help it prepare the reports that it was supposed to submit to various treaty bodies.

10. Recalling that a national human rights commission had been established in Togo in 1997, he asked whether that body had played an effective role following the serious violations which had been revealed by the Commission of Inquiry. Those acts were, of course, not strictly speaking within the Committee's jurisdiction, but it could not be ruled out that they were in fact linked to inter-ethnic and interracial tensions, the Committee having observed that such problems were often interrelated. The Committee might therefore stress the need for follow-up to the conclusions of the report of the Commission of Inquiry.

11. Mr. ABOUL-NASR suggested that the Country Rapporteur should prepare a brief text for the State party on the basis of a precedent in a similar case. In that text, the Committee might deplore the fact that the State party was late in submitting its report and the fact that there was no representative of the State party present, even though an invitation had been sent, and express regret that the seminar organized in Lomé had not yielded the expected results. It might set a new time limit for the submission of the report and invite the Government to re-establish a dialogue with the Committee.

12. Mr. YUTSIS said that the Committee should also express its concern about the general human rights situation in Togo. Although there might not be any outward signs of inter-ethnic tension for the time being, the possibility of such conflicts in Togo could not be ruled out.

13. Mr. DIACONU (Country Rapporteur) said that the Committee must request the State party not only to submit its report and resume the dialogue, but also to take action on the report of the International Commission of Inquiry for Togo. He explained to Mr. de Gouttes that that report did not refer to the National Human Rights Commission, perhaps because that Commission was experiencing considerable material and financial problems, according to the letter from the Minister of Justice.

14. The CHAIRMAN declared the discussion on the situation of Togo closed. He recalled that, at the request of the Lao People's Democratic Republic, the Committee had decided not to consider the situation in that country, but to hear the report by the Country Rapporteur so that the State party would have an analysis on which to base the preparation of its next report.

Lao People's Democratic Republic

15. Mr. de GOUTTES (Country Rapporteur) said that the Lao People's Democratic Republic had not submitted any report since its fifth periodic report, which was dated 26 July 1984 and had been considered by the Committee in 1985. Since then, the situation in the country had been reviewed twice by the Committee, in August 1992 and again in August 1996. Both times, the Committee had expressed regret that no new report had been submitted and that no delegation had been present.

16. It might be thought that the interruption of the dialogue with the Lao Government since 1985 could be explained by that country's difficult situation and, in its fifth periodic report, the Lao Government itself had indicated that the country had a shortage of staff qualified to prepare reports. It was, however, to be noted that the Lao Government had managed to submit its initial report on the Convention on the Rights of the Child in September 1997. In view of the genuine problems the country faced, however, the Committee must remind the Lao Government

of its obligations under the Convention and invite it to submit an updated report as soon as possible which would combine the main overdue reports and be drafted in accordance with the Committee's guidelines.

17. By way of general information, he indicated that the sixth periodic report of the Lao People's Democratic Republic should, first of all, contain information on political and institutional developments in the country since 1985, such as the content of the Constitution enacted on 15 August 1991, the position occupied by the Convention and international human rights instruments in the hierarchy of legal rules, the other international human rights instruments ratified by the Lao Government, the powers and jurisdiction of the Human Rights Office set up in 1997 and the position of non-governmental human rights organizations in the country. Secondly, the report should contain updated information on the ethnic composition of the Lao population. According to the 1984 report, the Lao People's Democratic Republic had 68 ethnic groups which were divided into three groups and which did not all have the same level of economic and social development (the Lao Loum, who lived in the lowlands; the Lao Sung, who lived in the mountains; and the Lao Theung, who lived in the high plateaux), whereas the 1995 census figures showed only 47 ethnic groups. Thirdly, the next report should provide information on the country's main socio-economic and cultural indicators, particularly with regard to the various ethnic groups.

18. The situation of the Hmong ethnic minority warranted particular attention. The Hmong lived in the northern part of Lao territory, constituted the country's second ethnic minority and made up nearly 10 per cent of the total population. According to various information sources, the Hmong were subjected to social discrimination and a systematic policy of displacement. It would be helpful if the next report could explain the content of the Government's policy with regard to the Hmong.

19. By way of specific information on the implementation of articles 2 to 7 of the Convention, the sixth report should indicate which legal provisions had been adopted to prohibit and punish various forms of acts of racism covered by article 4. In the case of article 5, information should be provided on the measures taken to guarantee the cultural, linguistic and religious rights of ethnic minorities, on the fate of refugees who had fled to neighbouring countries and the measures taken to facilitate their repatriation, on the situation of the Vietnamese and Chinese minorities in the Lao People's Democratic Republic and on restrictions on religious freedom to which persons belonging to minority religious groups had been subjected. As to article 7, it would be helpful if the Government could indicate in its future report what measures it was planning to take to disseminate the Convention and the Committee's conclusions, as well as the measures it had adopted to establish cooperation with non-governmental organizations. In inviting the Lao Government to submit a new report without delay, the Committee might suggest that it should make use of the technical assistance of the advisory services of the Office of the United Nations High Commissioner for Human Rights.

20. Mr. RECHETOV said that, quite apart from its high quality, the analysis by the Country Rapporteur for the Lao People's Democratic Republic should not be regarded as reflecting the Committee's general opinion or as a model that the Lao Government should follow faithfully.

Like all other States parties, the Lao People's Democratic Republic should follow the Committee's guidelines on the form and content of reports. The Lao Government should also be given an idea of the date when it should submit its report.

21. The CHAIRMAN said that, at one of its forthcoming meetings, the Committee would consider and adopt the final text which would be sent to the Lao Government and which would indicate the new time limit for the submission of the new periodic report. He requested the Country Rapporteur to prepare a draft text for that purpose.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 11) (continued)

22. The CHAIRMAN said that he would give the floor to the members of the Committee who had taken part in preparatory meetings for the World Conference against Racism and expert seminars related to the holding of the Conference.

23. Mr. ABOUL-NASR said that he and Mr. Fall had represented the Committee at the African Regional Preparatory Conference held in Dakar (Senegal) from 22 to 24 January. Before referring to the Conference itself, he expressed regret that he had not known in advance that another member of the Committee would also be present at the meeting, that he had not been informed until quite late of the date of the meeting, that the practical arrangements for his trip and stay in Dakar had left a great deal to be desired, that he had not received the relevant documents in advance and that all the members of the Committee who had been supposed to represent the Committee at such meetings had not been able to meet in advance in order to agree on the statements they would make.

24. The Dakar meeting had been an inter-ministerial meeting at which most of the African countries had been represented. During the plenary meetings, the statements by the ministers had been very general. On the second day, the participants had considered a document which had been prepared by the African Group in Geneva and which he had been able to obtain on the spot. The document did not refer either to the Convention or to the Committee. Since the Drafting Committee of the meeting had been open only to African countries, he had had to approach delegations to request that reference should be made to the Convention and to the Committee. After many problems, those references had finally been included in paragraphs 17, 23 and 25 of the declaration adopted by the meeting.

25. The work of the Working Group of the Preparatory Committee which was now meeting in the Palais des Nations was quite disorganized and, since the document prepared by the secretariat on the basis of the four regional preparatory meetings left something to be desired, another document was being drafted. The members of the Committee must therefore keep a close watch on the work of the Working Group and ensure, in particular, that the document which would be adopted contained a proper reference to the Convention and the Committee. In view of the problems it had encountered so far in having its role recognized, the Committee must think about the best possible ways of making its voice heard and exerting some influence at the World Conference in South Africa.

26. In conclusion, he drew the Committee's attention to two important points: the proposal made in Dakar, and perhaps at other regional meetings, for the establishment of machinery to monitor the implementation of the declaration and plan of action which would be adopted at the end of the World Conference. In his view, there was no need to establish such a body and it was the Committee itself that should be given such responsibility, considering that, since its own establishment, it had acquired experience, competence and knowledge that fully qualified it for that task. In addition, he stressed that, during the drafting of the declaration and the plan of action, the Convention on the Elimination of All Forms of Racial Discrimination should be given its rightful place and all States which had not yet done so should be urged to accede to it.

27. Mr. LECHUGA HEVIA said that he had been unable to attend the Regional Preparatory Conference in Santiago because of the lack of coordination between the United Nations services concerned and travel agencies. He had quite simply received his ticket too late.

28. The CHAIRMAN said that that type of misadventure was not the only one of its kind and that it had befallen several of the representatives of the six treaty monitoring bodies. That was a waste of money and effort for the United Nations, whose financial problems were frequently referred to, and he proposed that that question should be raised once again at the next meeting of Chairpersons of treaty monitoring bodies.

29. Mr. SHAHI, reporting on the Regional Preparatory Conference for the World Conference held in Tehran, said that, contrary to what he had been promised, he had not been allowed to take part in the work of the Drafting Committee of that meeting, since the draft text prepared in Geneva by the Asian Group was to be used as it stood. Mr. Sherifis, who had attended the plenary meetings, had, however, been able to describe the work the Committee was doing with a view to the World Conference and to submit the recommendations prepared by Mr. Valencia Rodríguez to a very receptive audience.

30. He had undertaken to give his opinion on the draft declaration and plan of action prepared by the Asian Group. He had, for example, said that he was pleased to note that, without explicitly saying so, the Group had placed particular emphasis on the implementation of the provisions of articles 2, 4, 5, 6 and 7 of the Convention. He had also welcomed the warm reception given to the proposal by the African countries, which had, during their Regional Preparatory Conference, requested that the countries and peoples which had been subjected to slavery should be entitled to compensation. He had, however, noted with concern that the declaration and plan of action prepared in Tehran did not refer to the recommendations of the Brahimi report and had made it known that, in the context of its early warning measures and urgent action procedures, the Committee intended to follow up those recommendations.

31. Mrs. McDOUGALL, reporting on the Regional Preparatory Conference which had been held in Santiago and which she had attended without actually being mandated to do so by the Committee, said that the Drafting Committee of that meeting had, of course, recognized the existence of the Committee on the Elimination of Racial Discrimination, but had not allowed it to be a full participant. The Committee's representative, Mr. Valencia Rodríguez, had also been unable to make a general statement in plenary. The Convention was, of course, mentioned in the draft declaration prepared at that meeting, but not as prominently as it should be.

32. The main points relating to the region of the Americas which had been raised during the meeting included the question of the legacy of slavery and colonialism and the discussion of the type of compensation to be proposed in that regard. The participants had also spent a great deal of time discussing three groups of victims: first, American indigenous peoples, whose rights were beginning to be recognized, but whose existence as peoples - and she had insisted on the "s" at the end of the word "peoples" in the English text of the draft declaration - entitled to genuine self-determination was not yet fully recognized; secondly, the descendants of slaves, a group whose history and situation the participants had, however, recognized only at the end of the meeting; and, thirdly, migrants, whose specific problems had also been referred to. The problems caused by globalization and the cause-and-effect relationship between race and poverty had also been discussed, but the participants had not been able to determine which of those factors determined the other. The participants had also dealt with the question of obstacles to the full enjoyment of rights that could, for some people, be constituted by their race, their sex, their disability or their nationality.

33. She also noted that the Santiago draft declaration contained some obvious gaps. It did not refer to the responsibility of transnational corporations and international financial institutions for poverty. She had, however, noted with interest that, for the first time, the United States of America and Canada had taken part in the meeting as full members of the new region known as "the Americas", and not simply as observers.

34. Mr. de GOUTTES, reporting on the European Conference against Racism, which had been held in Strasbourg, said that it had been attended by participants from many different horizons and who had represented European and other States, NGOs, national human rights institutions, international organizations, such as OSCE, and agencies, such as the Office of the United Nations High Commissioner for Human Rights. The Committee's influence had been felt, thanks primarily to Mr. Sherifis, who had made a statement on the Committee, and when Mr. van Boven, a former member of the Committee, had explicitly emphasized the importance of the Convention on the Elimination of all Forms of Racial Discrimination, expressed regret that too few States had made the declaration provided for in article 14 and submitted a report on regional, national and international legal protection against racial discrimination.

35. Two important texts had been adopted in plenary at the European Conference, i.e. general conclusions and a political declaration by ministers. The general conclusions contained the following main elements: an appeal to all States to sign and ratify the Convention and to make the declaration provided for in article 14, an invitation to States to ensure that no reservation was contrary to the object and purpose of the Convention, the proposal that States should give NGOs the opportunity to help victims in legal proceedings, the importance of the collection and publication of data on cases of racism disaggregated by sex and age, education, training, communication and relations with the media and a recommendation on the promotion of regional and international cooperation between bodies working to prevent racism and protect human rights.

36. The ministers' political declaration reflected the Committee's concerns in many respects. The ministers thus denounced the continued existence of manifestations of racism and contemporary forms of slavery in Europe and elsewhere, of which migrants, asylum-seekers, refugees, indigenous persons, displaced persons and minorities such as the Roma and gypsies

were the main victims. They also expressed concern about cases of ethnic and religious cleansing and the use of new mass communication technologies which allowed the spread of racism. They drew attention to the important role the United Nations played in action to combat racism through the Convention and through the Office of the United Nations High Commissioner for Human Rights. They made proposals which met the requirements of the Convention and called on States to ensure the full and complete implementation of international instruments at the national level by withdrawing reservations, adopting national legislation characterizing acts of racism as crimes, in accordance with article 4 of the Convention, making concern about sexual equality part of action to combat racism, as the Committee had requested in its Recommendation 25, promoting and protecting cultural minorities, especially the Roma and gypsies, as the Committee had recommended in its General Recommendation 27, and training judges, prosecutors, police officers and prison staff to respect human rights.

37. The conclusions of the European Conference against Racism were extremely rich and took full account of the concerns which the Committee often expressed. It was to be hoped that the World Conference would include those conclusions in the declaration and plan of action it adopted.

38. Mr. ABOUL-NASR requested Mr. de Gouttes to provide further information on the documents adopted at the European Conference in Strasbourg. Were they political or legal documents and why had two documents been adopted at the Conference? He also requested Mr. de Gouttes to indicate whether any consideration had been given to the question of compensation for the victims of colonialism and slavery, for which European countries had been primarily responsible. He was following the discussions of the Inter-sessional Working Group of the Preparatory Committee for the World Conference against Racism and it was apparent that most European delegations objected to the inclusion of a reference to that question in the documents to be submitted to the World Conference against Racism.

39. He also asked whether the two documents adopted in Strasbourg referred to machinery to be established in order to ensure the follow up to the World Conference. Indicating that that question had been dealt with in the text of the declaration adopted by the Regional Preparatory Meeting held in Dakar from 22 to 24 January 2001 and that it had been decided that such follow-up machinery should be entrusted to the Secretary-General of the World Conference, he said that he was personally opposed to that decision because, in his opinion, the Committee was entirely suited to playing that role. In addition, why did the Strasbourg political declaration contain a proposal for the establishment of an international observatory on racial behaviour when the Committee could also carry out that task perfectly well?

40. Mr. de GOUTTES said that the first of the two documents adopted at the European Conference in Strasbourg contained the general conclusions adopted by the European Conference and the second contained a political declaration which had been adopted by the ministers of the member States of the Council of Europe and which was primarily a summary of the meeting's general conclusions.

41. The question of the compensation of victims of colonialism and slavery had been raised in the general conclusions of the European Conference, which indicated, inter alia, that all States must recognize the suffering inflicted by slavery and colonialism and reject ethnic and religious

cleansing and genocide in Europe and other parts of the world and work together to prevent them from occurring again. That question was also referred to at the end of the preamble of the political declaration adopted by the ministers, which stated that the suffering inflicted by slavery and resulting from colonialism must be remembered. However, the question of compensation for the victims, which had been raised at the Dakar and Tehran meetings, was not dealt with in the documents adopted at the European Conference. Neither of the two documents adopted in Strasbourg referred to the establishment of machinery to follow up the World Conference.

42. Mrs. McDOUGALL said that the conclusions and recommendations adopted at the regional meeting held in Santiago (Chile) from 25 to 27 October 2000 reflected the participants' determination to promote the implementation of the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. In a chapter of the conclusions relating to the Convention, all States were invited to ratify that instrument in order to achieve the objective of its universal ratification by 2005. States were also invited to restrict the scope of the reservations they had formulated to some articles of the Convention and to ensure that no reservation was incompatible with the principles and objectives of the Convention. States were also requested to continue cooperating to promote the full implementation of the Convention through effective and transparent dialogue. The Committee's substantive concerns were thus reflected throughout the document, even though the articles of the Convention were not explicitly referred to.

43. Mr. RECHETOV said that the Warsaw Regional Meeting in which he had taken part as the representative of the Committee had been very useful in that it had brought together representatives of central and eastern European countries. Experts had been in charge of the discussions, in which various NGOs, including NGOs representing gypsy communities, had taken part.

44. During the meeting, many academics had drawn attention to the provisions of national constitutions referring to racial discrimination and it had thus been possible to identify the countries with the best machinery for combating the problem. He himself had drawn the participants' attention to the fact that machinery for action to combat racial discrimination was already provided for in the Convention, which would, if it was universally and fully implemented, make it possible to take effective action to combat racial discrimination. In that connection, he had managed to ensure that the final document of the meeting contained a special section on the strengthening of the implementation of the Convention in which an appeal was made for all Member States of the United Nations to ratify the Convention and for those which were already parties to submit reports to the Committee on a regular basis. They were also requested to fulfil their obligations under article 4 of the Convention and to reconsider their reservations to that article. He had also suggested that civil society should be requested to put pressure on States parties to take account of civil society's viewpoints in the reports they submitted to the Committee and that States which refused to take account of those viewpoints should be requested to submit a parallel report.

45. Mr. YUTSIS said that he had represented the Committee at the Regional Preparatory Conference held in Santiago (Chile) from 25 to 27 October 2000. The final declaration adopted at the Conference contained several extremely important recommendations from the Committee's point of view and reaffirmed that it was impossible to deny the existence of racism

and the relationship between poverty, racial discrimination and racism. A sign of clear progress had been the new attention paid to two questions, i.e. the question of interbreeding in Latin America and the situation of the Afro-American community.

46. With regard to the references to the Committee and the Convention in the final declaration adopted at that Conference, he indicated that it had been recommended that the States of the region which were not parties to the Convention should speed up the process of the ratification of that instrument in order to accede to it before the World Conference against Racism was held. Even though the Convention and the Committee were not explicitly referred to in the final declaration, the foundations had been laid for determining which factors worked in favour of the universal ratification of the Convention.

47. He had also taken part from 16 to 18 February 2000 in a satellite meeting on the protection of migrant workers which had been held in Segovia (Spain) under the auspices of the Office of the United Nations High Commissioner for Human Rights. He would report to the Committee on that meeting at a later date.

48. Mrs. McDOUGALL, informing the Committee of the progress of the work of the Inter-sessional Working Group of the Preparatory Committee for the World Conference against Racism, said that the heads of the regional groups had met on 7 March 2001 and that the plenary meeting had decided that consultations should continue within the regional groups. At a later date, the Working Group would probably consider draft declarations and programmes of action to be submitted to the World Conference. She would continue to keep the Committee informed of the progress made by the Working Group.

49. Mr. ABOUL-NASR said he was surprised that the Committee had never been consulted about the choice of experts invited to take part in various meetings and conferences. He wished to know who invited the experts and on the basis of which criteria.

50. Mr. YUTSIS said that the Office of the High Commissioner for Human Rights decided which experts represented the Committee at meetings and conferences organized around the world.

The meeting rose at 1.10 p.m.

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Fifty-eighth session

SUMMARY RECORD OF THE 1443rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 8 March 2001, at 3 p.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 3.10 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4) (continued)

International Women's Day

1. The CHAIRMAN outlined the history of the proclamation of 8 March as United Nations Day for Women's Rights and the adoption and entry into force of the Convention on the Elimination of All Forms of Discrimination against Women and subsequently of the Optional Protocol thereto, and referred to the three world conferences on women and the work of the treaty monitoring body, the Committee on the Elimination of Discrimination against Women.

2. In March 2000 the Committee on the Elimination of Racial Discrimination had adopted General Recommendation XXV on gender-related dimensions of racial discrimination. In the General Recommendation the Committee noted that there were circumstances in which racial discrimination only or primarily affected women, or affected women differently from men. Such racial discrimination would often escape detection if there was no explicit recognition or acknowledgement of the different life experiences of women and men in public and private life. Recognizing that some forms of racial discrimination had a unique and specific impact on women, the Committee had stated that it would endeavour in its work to take into account gender factors or issues which might be interlinked with racial discrimination, and would enhance its efforts to integrate gender perspectives, incorporate gender analysis, and encourage the use of gender-inclusive language in its sessional working methods and texts. Accordingly States parties reporting to the Committee were requested to describe factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention.

3. The Committee endorsed the statement to mark International Women's Day 2001 made by the United Nations High Commissioner for Human Rights in which she had called upon all States to accept the international framework for the fight against discrimination and to ratify the International Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol as well as the International Convention on the Elimination of All Forms of Racial Discrimination. She had also appealed to them to review their laws and policies and repeal those that disproportionately affected women, particularly those from disadvantaged racial groups. States should pay attention to the specific needs of certain groups, such as indigenous women, women refugees, migrants and trafficked and displaced women and develop education and training programmes to eliminate discriminatory attitudes.

4. He conveyed his best wishes to the two women Committee members and to all women present and elsewhere, expressing his solidarity to them in their fight for equality and justice.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial and second periodic reports of Japan (CERD/C/350/Add.2)

5. At the invitation of the Chairman Mr. Haraguchi, Ms. Ozaki, Mr. Katsura, Mr. Kaitani, Mr. Watanabe, Mr. Beppu, Mr. Kobayashi, Mr. Chiba, Mr. Iwanade, Mr. Seto, Mr. Shibuya, Mr. Katahira, Mr. Coyori, Mr. Horino, Mr. Wada, Ms. Katagiri and Ms. Maeda (Japan) took places at the Committee table.

6. Mr. HARAGUCHI (Japan) said that the long-standing problem of racial discrimination had been compounded by new forms of racial discrimination resulting from the phenomenon of increased migration and causing serious social problems in many countries. Referring to his own country, he said that, in addition to discrimination against the Utari, Korean residents and others, Japan now had to cope with problems caused by the large influx of foreign workers, mainly from Asian countries, in the previous decade. The elimination of all forms of racial discrimination, old and new, called for constant vigilance.

7. The Constitution of Japan clearly stipulated that all persons were equal before the law, irrespective of their race or other factors. As a party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, Japan was deeply committed to building a society based on the principles enshrined therein, without any form of racial or ethnic discrimination, and to ensuring respect for the individual and the full development of his or her potential. Japan had also played an active role in the adoption of relevant United Nations resolutions and contributed to the Trust Fund for the Programme for the Decade to Combat Racism and Racial Discrimination. Japan shared the views of the High Commissioner for Human Rights that the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should be forward-looking, constructive, and practically focused with the aim of resolving present and future racial discrimination problems. The declaration and programme of action to be adopted at the World Conference should guide each country effectively in its efforts to eliminate racial discrimination in the twenty-first century. As it had done at the Asian regional preparatory conference, Japan intended to play an active role in the World Conference.

8. During the various stages of preparation for consideration of its report, the Japanese Government had carefully examined its efforts on racial matters from various standpoints through exchanges of views with the national non-governmental organizations (NGOs) concerned. It looked forward to a frank and constructive dialogue with the Committee and would welcome its suggestions.

9. Ms. OZAKI (Japan) said that she would be essentially updating information contained in Japan's initial and second periodic reports (CERD/3/350/Add.2), submitted in June 1999. The Ainu people maintained their ethnic identity through continuous efforts to pass on their own language and culture. In 1999 their population in the Hokkaido area had been estimated at 23,767. With regard to their living conditions, the ratio of public assistance recipients per 1,000 members of the population had stood at 37.2 per cent - a slight decrease from

the 1993 ratio. The gap in living standards between the Ainu people and others residing in those areas had narrowed considerably since the early 1970s, demonstrating the positive effects of the Hokkaido Utari Measures, described in paragraph 13 of the report. The fiscal year 2001 would be the last year of the Fourth Hokkaido Utari Welfare Measures and a study of their overall results was under way.

10. She outlined the background to Korean immigration and the status of Korean residents and their descendants in Japan, as described in paragraphs 32 to 37 of the report. Following the signing of the memorandum by the foreign ministers of Japan and the Republic of Korea in 1991 (para. 37), high-level consultations had continued on an annual basis, with the ninth consultation held in Seoul in December 2000. Following those consultations the Japanese Government had endeavoured to create stability for Korean residents in Japan and grant them favourable conditions, notably in terms of special permanent resident status, affecting the period of validity of re-entry permits and the landing examination (paras. 39 to 43).

11. The Constitution of Japan guaranteed fundamental human rights to all foreign nationals residing in Japan except for the rights which by their nature were interpreted as being applicable to Japanese nationals only. The Government actively pursued the goals of ensuring equal rights and opportunities for all foreign nationals, respecting their own cultures and values, and promoting mutual understanding. Quoting paragraphs 27 to 29 of the report, she said that equality of rights extended to education, employment and labour conditions, public housing subject to certain conditions, social security, national pension and health insurance, child and maternity allowances and public assistance.

12. Regarding remedies and compensation measures for human rights infringements, the Constitution stipulated respect for fundamental human rights and freedoms (art. 11) and equality under the law and the prohibition of racial discrimination (art. 14, para. 1). Any public officials or public entities inflicting harm on a person on grounds of race in the course of their duties were liable to provide fair compensation for the damage according to the Law concerning State Liability for Compensation. In accordance with the Civil Code, racially discriminatory acts infringing human rights might be deemed null and void (arts. 1 and 90) and any person who violated the rights of others by racially discriminatory conduct must give fair and proper compensation for any damage caused (art. 709). Article 32 of the Constitution guaranteed all persons the right of access to the courts; victims of racial discrimination could seek redress under the relevant legislation.

13. In accordance with the Code of Criminal Procedure where the racially discriminatory conduct constituted a crime, only public prosecutors could initiate prosecution (art. 247). However, the injured party (art. 230) or any other person alleging to be a victim of such an offence (art. 239) could file a complaint with the investigative authorities. They would investigate the case fairly on the basis of such complaints and, if sufficient evidence for prosecution was found, the public prosecutor would pursue the case in court.

14. The Human Rights Bureau in the Ministry of Justice was the main organ responsible for human rights protection and promotion. It had regional offices in every prefecture; furthermore, each of those offices had field offices, of which there were a total of around 280. Those offices worked to protect and promote human rights in the communities so as to facilitate access to

the system for the victims of human rights infringements occurring in day-to-day life. Some 14,000 Civil Liberties Commissioners also operated throughout the country. The network had been set up with a view to monitoring human rights infringements and promoting human rights awareness with the cooperation of knowledgeable citizens of good character chosen from the local communities. As the number of foreigners in Japan increased, new types of human rights problems arose. To cope with the growing demand by foreigners for counselling, facilities had been set up in the eight main Legal Affairs Bureaux to provide counselling for foreigners with the services of English and Chinese translators. The smaller district legal affairs offices offered such services on an occasional basis, for instance during Human Rights Week. Such services were provided free of charge and with due regard for the privacy of the persons concerned.

15. The Government had undertaken various human rights awareness activities since its accession to the Convention and in connection with the proclamation of the United Nations Decade for Human Rights Education. The Council for Human Rights Promotion, established in the Ministry of Justice in 1997, was currently examining the relief system for human rights violations and had issued an interim report in November 2000. The report pointed to a need for an independent relief mechanism, with reference to relevant international and national standards. In addition to the counselling, mediation and guidance provided so far, other relief measures were required, such as conciliation, arbitration, warning and publication, as well as litigation assistance for the victims of human rights infringements including racial discrimination. In particular, the Council was considering the possibility of introducing a relief measure with legal effect, namely a human rights redress institution to assist victims in upholding their rights through court proceedings where recourse had not been available through the method of warning and publication. The Council was in the process of drafting a report on the relief system in response to comments from the general public on the interim report. The Government would endeavour to implement the recommendations made by the Council on the subject.

16. Japan had entered a reservation to article 4 (a) and (b) of the Convention, to the effect that it would fulfil the obligations under those provisions so long as that was compatible with the guarantee of rights to freedom of assembly, association and expression and other rights under the Constitution of Japan. The practices listed in article 4 (a) and (b) were punishable provided they did not conflict with the Constitution; to that extent Japan complied with its obligation under the Convention. The reservation had been entered because the provisions of the article could cover a variety of practices under diverse conditions. The Government of Japan held that respect for human rights by the general public should essentially be enhanced through free speech, guaranteed by freedom of expression; and the most appropriate way for society to eliminate existing discrimination and prejudice was by itself and of its own free will, by observing the constitutional provision prohibiting the abuse of freedom and rights. It was hoped that public-relations activities carried out by the Government would facilitate such self-cleansing action in society.

17. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) welcomed the high-level delegation of Japan, commending its informative introduction to the country's initial report. Japan's incipient dialogue with the Committee was an important event not only for the country and the Committee, but for the international community as a whole and he looked forward to a constructive exchange.

18. Commending the constitutional principles of pacifism, respect for the human rights of all persons and non-discrimination, he asked whether, under article 98 of the Constitution, the International Convention on the Elimination of All Forms of Racial Discrimination was directly applicable by the courts. He welcomed the demographic data provided. Japan was a very densely populated country consisting of a variety of ethnic groups, not to mention the growing number of foreigners, who currently accounted for 1.2 per cent of the population. He noted that the authorities allowed refugees from Viet Nam, Laos and Cambodia to settle in Japan.

19. According to the Ainu Association of Hokkaido, the Ainu (also known as Utari), who were the original inhabitants of Japan and now numbered 50,000, had their own language, customs and culture, and their livelihood was basically restricted to fishing, hunting and harvesting. Traditionally discriminated against, they had resorted to adopting Japanese names to avoid identification and had protested at measures to assimilate them and oblige them to adopt values other than their own. The Committee would be grateful for further information concerning the positive measures taken by the Hokkaido Prefecture to improve the Ainu's lot, as well as the practical results. It would also like to know what action was being taken in the light of the reported failure of the native land protection laws. Could the delegation supply further information on the application of the 1997 Law for the Promotion of the Ainu Culture and for the Dissemination of and Advocacy for the Traditions of the Ainu and the Ainu Culture, which apparently did not recognize the Ainu as an indigenous people? It was also a matter of concern that the Ainu were still subject to outright discriminatory practices relating to their livelihood, as well as to more subtle discrimination, such as the practice of omusha, whereby Japanese groups attempted to entice Ainu with gifts in order to obtain their unconditional obedience. Indeed, Ainu women were doubly victimized, since they were also frequently sought for sexual favours.

20. The Immigration Control and Refugee Recognition Act established closed categories of foreigners, thereby violating article 5 (e) (i) of the Convention, as well as establishing categories that might reflect ethnic criteria based on national origin. Housing authorities sometimes required presentation of a special document held only by Japanese, thus impeding foreigners' access to housing of their choice. Could the delegation also clarify the curious statement in the report that 91.6 per cent of foreigners from Asian countries were classified as "entertainers"? Also, if it was indeed the precarious situation of Japanese workers that precluded the admission of foreigners for unskilled labour, such a policy must certainly not be based on ethnic or racial considerations and, once the situation stabilized, Japan would be expected to open its doors to such foreigners. Like many developed countries, Japan had its share of "illegal" workers - currently numbering 276,810 - who were either unemployed or performed ill-paid marginal jobs. Any measures to regulate the situation should respect those persons' basic human rights, with the brunt of the penalties imposed on traffickers who exploited them rather than on the immigrants. The Committee would like further information concerning the measures taken to protect the basic human and cultural rights of foreign residents and promote mutual understanding, as well as on the education on offer to foreign children in public schools.

21. The Committee recommended that the State party should intensify measures to eradicate discrimination against foreigners - mainly in regard to housing and access to public swimming pools - on the basis of linguistic, religious or cultural differences. Foreigners were often categorically excluded from some restaurants and it was not unknown for some to display

notices admitting only foreigners who did not appear undesirable. Koreans, who constituted about one third of Japan's foreign population, were also allegedly subject to discrimination and they, too, were often obliged to change their name for fear of such practices. The Committee therefore welcomed the talks between Japan and the Republic of Korea on the legal status of Korean refugees and on the scope of the pertinent Immigration Control Special Law. It urged the authorities to intensify measures to preserve Korean cultural values, promote better understanding and remedy existing inequalities.

22. He drew the Government's attention to Amnesty International's charge that asylum-seekers were often persecuted by the forces of law and order, arrested on the flimsiest of charges and imprisoned in inhumane conditions, sometimes resulting in death. The Committee would like to know more about the situation and whether such treatment was racially inspired. In the light of the statement that all refugees in Japan were Indo-Chinese, it was to be hoped that it was not policy to afford them special treatment and that Japan's doors were open to other potential refugees.

23. With regard to article 2 of the Convention, he sought further information on efforts to combat racial discrimination by public authorities and, particularly, by individuals. More information was needed about the functions and attributes of the Council for Human Rights Promotion and its success in promoting human rights, particularly with regard to the prohibition of racial discrimination and compensation to victims. With reference to paragraph 64 of the report, exactly how could a discriminatory act that was deemed to be contrary to public policy or good morals be nullified? Following the nullification, was a criminal trial required for the perpetrator to be sanctioned?

24. In connection with article 3, he commended Japan's contributions to the various programmes and funds established in southern Africa to help eradicate discriminatory practices against people of the region and enhance their living conditions. Pointing out that article 3 concerned segregation in a more general sense, he wished to alert the Government to the creation and maintenance in many urban areas of sectors reserved for foreigners. In regard to article 4, which was binding on all States parties, the Committee's attitude had traditionally been that the right of association and freedom of expression were not absolute and could not be invoked, for example, to disrupt legitimately established order or foment internal discord. It had expressly stated in its General Recommendation XV that the prohibition of the dissemination of all ideas based upon racial superiority or hatred was compatible with the right to freedom of opinion and expression. Hence, States parties were required to enact and effectively enforce appropriate legislation. While the Penal Code did sanction many offences that might have racist or ethnic connotations, its provisions were excessively general, whereas the Convention required States parties to issue a specific provision making the dissemination of racist ideas an offence. It was vital for Japan to fulfil that obligation, especially in view of the reported racist acts against Korean students. Although violence and subversion were punishable by law, Japan was called upon, pursuant to article 4 (b) of the Convention, to declare illegal and prohibit organizations that promoted or incited all forms of racial discrimination. In the light of the foregoing, the Japanese Government was requested to withdraw its reservation to that provision. In the field of information, action taken under the Broadcast Law and the Code of Ethics for use of the Internet were positive steps towards the eradication of slander or racial hatred.

25. Notwithstanding the copious data supplied in connection with article 5, where article 4 was concerned, it was disturbing that Governor Ishihara of Tokyo had been allowed, with impunity from the Government, to make slanderous comments linking the rising rate of violent crime in Japan to "sangokujins", allegedly illegal immigrants from former Japanese colonies. Exclusion was a form of racial discrimination; on the contrary, foreigners must, without discrimination, be encouraged, to participate actively in the life of their adopted country despite cultural differences. As to the right to vote, since the Supreme Court's 1995 ruling that foreigners registered as permanent residents could vote in local elections had been variously interpreted, he recommended that the authorities should standardize the situation for one and all. A judicious step would be for all local authorities to establish foreign citizens' representative councils, as two of them had done. Japanese law should also explicitly recognize the right of Japanese citizens to return to their country and not only to leave it. In addition, the Committee would be grateful for further information concerning the counselling and assistance for settlement provided by the human rights organs of the Ministry of Justice in cases of alleged discrimination based on race or ethnicity. Had there been cases in which those measures had been applied? More information was also needed on the workings of the system whereby the same qualifications for tenant applications as those for Japanese residents must apply to foreigners with registered domicile. Also, the administrative measure that afforded protection to permanent and settled residents should be passed into law.

26. With regard to education, it was unsatisfactory that foreign children were not obliged to attend school but were merely accepted at public schools. The law should impose on them the same obligation as was incumbent on Japanese children in order to avoid different educational standards or separate education systems. Did the statement contained in paragraph 143 of the report imply that racial discrimination was prohibited in registered hotels but condoned in those that were not?

27. On the subject of article 6 of the Convention, it was not enough that only the Constitution and Penal Code gave victims of racial discrimination access to the courts. That right should be specifically enshrined in the domestic legislation. The rulings in cases heard by the Yokohama and Osaka District Courts were gratifying, as was the information concerning the two cases cited in paragraph 162 of the report. However, it was incumbent upon the Japanese Government to ensure that there was no recurrence of such acts and to keep the Committee abreast of any that occurred and the action taken to prevent or punish them. He expressed doubts about the effectiveness of a system of legal aid which required the beneficiaries to repay the costs of such aid in full, and sought more detailed information concerning the administrative organizations responsible for obtaining redress for victims of racial discrimination. Indeed, was the Civil Liberties Bureau of the Ministry of Justice among them? It was to be hoped that investigation of human rights infringements embraced racially discriminatory acts. Could the delegation confirm whether, since such an investigation had no legal status, the voluntary cooperation needed from the persons concerned referred only to the victims? He wondered whether the conscience-searching required of human rights violators had produced practical results and whether some more objective measure was not required.

28. He applauded the positive measures taken by the Government, in regard to implementation of article 7, for enhancing awareness of human rights, eliminating racial discrimination and promoting Ainu culture, all of which were to be encouraged, as was the

dissemination of the country's initial report. The Committee hoped that its comments and concluding observations would be equally publicized. At the same time, it recommended that the State party should redouble its efforts to inform and educate all law enforcement officials, law students and anyone in direct contact with minority groups.

29. The report was silent on important issues, such as that of the Buraku, who, although of Japanese ethnic origin, were said to be traditionally treated as pariahs and relegated to the most demeaning jobs, while "Buraku Lists" were circulated to private companies, thus denying that group access to contractual employment. In those circumstances, many had committed suicide. Surprisingly, the authorities had not mentioned their plight, which was well documented both abroad and in Japan, where the Buraku Liberation Human Rights Research Institute, a non-governmental organization (NGO), strove to improve their situation, on the basis of the principle of the equality of all Japanese. While he acknowledged that Japan had in 1969 instituted measures to better the lot of that ethnic group, he would appreciate more data on the subject. Another matter not mentioned in the report, and on which information would be welcome, was the situation of the inhabitants of Okinawa, of different ethnicity from Japanese and possessing their own language and culture. Formerly an independent country (Ryukyu Kingdom), the island had been discriminated against by the Japanese from the nineteenth century, a fact exacerbated by the presence there of thousands of United States troops.

30. In closing, he invited the Japanese Government to consider making the declaration provided for in article 14 of the Convention to permit the Committee to consider communications from individuals or groups, and to ratify the amendments to the Convention adopted at the 14th meeting of States parties. He drew the delegation's attention to a number of documents submitted to the Committee by Japanese NGOs.

31. Mr. DIACONU said that, although Japan was a modern democracy, it had strong traditions stemming from its insularity and past geographical isolation. It was important that discussion of its initial report should be frank and constructive and that the Government should heed the Committee's comments in an effort to bring its legislation into line with the Committee's recommendations. The report of Japan, which dealt essentially with the pertinent legislation, cited solely article 14 of the Constitution as prohibiting racial discrimination. Did the delegation consider that article 1 of the Convention was adequately covered by that constitutional provision? He also sought clarification of the relationship between the Convention and domestic law and asked whether the Convention could be directly applied in the courts. Although the report stated that international conventions were applicable directly on a case-by-case basis, apparently none of the Convention's provisions had ever been directly applied.

32. The report did not stipulate what penalties were imposed for discrimination regarding the use of public facilities, to cite one example. Inasmuch as other countries enacted comprehensive legislation for all categories of discrimination, the Japanese authorities should supplement theirs, on the basis of the principle that any racially discriminatory act should be punished per se, and not merely if it was deemed contrary to public policy and good morals. Indeed, could any such act fail to run counter to public policy or good morals? According to the report, an act of discrimination was punishable if it entailed a violation of criminal law. But was not such an act in itself a violation of criminal law?

33. Turning to article 4 of the Convention, he expressed doubts about whether Japan's reservation to article 4 (a) and (b) was compatible with the purpose of the Convention. According to the report, Japan fulfilled the obligations under those provisions to the extent that fulfilment was compatible with certain rights (para. 72), yet it had not adopted any law providing for punishment for the acts set out therein, and nothing in the Penal Code (paras. 76-90) made any mention of the element of racial discrimination in any offence. It was as though the Convention did not exist. For most countries, racial discrimination constituted an aggravating circumstance. Did that mean that Japan considered all the obligations stemming from article 4 (a) and (b) to be contrary to its Constitution? If it did, that would explain why there was no such law. But if there were obligations which were compatible with the Japanese Constitution, there must be a law to punish such offences. The absence of any such law meant that for Japan article 4 as a whole was not applicable, despite its being a cornerstone of the Convention. Other countries had formulated such a reservation, but they had also produced legislation clearly punishing acts of racial discrimination as defined in the Convention; moreover, bodies of human rights experts had repeatedly stated that there was no contradiction between making acts of racial discrimination a punishable offence and freedom of expression, association or assembly. According to the International Covenant on Civil and Political Rights, those rights were not absolute and could be the subject of restrictions, and freedom of expression did not allow incitement to national or ethnic hatred. To his knowledge, Japan had not formulated a reservation to the Covenant. The absence of legislation explained why the Governor of Tokyo could repeatedly make discriminatory statements about foreigners with impunity, why xenophobic posters continued to be put up in public places without the authorities intervening and why attacks against Korean students and the dissemination of racist brochures went unpunished.

34. Racial discrimination could be deliberate or unintentional. He questioned Japan's position that respect for human rights by the general public should essentially be enhanced through free speech, and that society itself should eliminate any existing discrimination and prejudice "of its own free will". The State was not alien to society and, as an organ of society responsible for enforcing the law and eliminating discrimination, must intervene and mobilize society in favour of human rights and punish violations, and not wait for the world to improve itself on its own. The application of article 4 therefore remained a subject of concern. The Japanese Government should review the situation, adopt the necessary legislation and withdraw its reservation, or else specify to what extent the provisions of article 4 were incompatible with the Constitution.

35. Regarding the indigenous populations, the report stated (paras. 65-66) that the Hokkaido Former Natives Protection Law and the Asahikawa Reservation Law aimed at stabilizing the lives of the Ainu by granting them land free of charge had not been applied, had lost their raison d'être and were discriminatory. He failed to see how legislation which was meant to defend those groups could be discriminatory. What new legislation had been adopted to protect them, their reservations and their right to land? Paragraph 66 referred solely to the promotion of Ainu culture and traditions. According to NGO reports, in 1991 the Japanese Government had recognized the Ainu as an ethnic group which had existed before Japan had taken possession of their territory. Accordingly, the Ainu must be recognized as an indigenous people in keeping with international standards. What population, if any, did Japan recognize on its territory as an indigenous people? Did Japan intend to ratify International Labour Organization (ILO)

Convention No. 169 on indigenous and tribal peoples in independent countries? Did not the Okinawans, who had their own language, culture and traditions, constitute an indigenous population? According to NGO reports, they were deprived of their culture and traditions and were subject to many acts of discrimination owing to the occupation of the island by the armed forces of the United States of America.

36. As to the Buraku, he pointed out that the Convention was also applicable to discrimination based on descent. It was no surprise that a group that had been isolated and treated differently for such a long time should develop a different culture and have other traditions. The Buraku were a minority group whose culture must be protected. Yet members of the Buraku community were reportedly discriminated against, for example in hiring practices.

37. Concerning the Korean community in Japan, currently estimated at 1 million persons, he asked how many did not have Japanese citizenship and whether they could obtain it if they so desired. Could the Japanese delegation comment on reports from NGOs that such persons must give up their Korean name when they applied for Japanese citizenship? Were the Koreans recognized as a minority in conformity with article 27 of the International Covenant on Civil and Political Rights? As the Japanese Government had already concluded arrangements with the Republic of Korea on the Korean population, it might consider adopting comprehensive legislation to clarify that group's minority status. According to reports, verbal abuse and even acts of violence directed against Koreans were commonplace. The reaction of the authorities in the face of such violence left much to be desired: there had been only three arrests for the 160 assaults reported. Given the size of the Korean minority, why were there no regular Korean-language or bilingual schools?

38. Mr. de GOUTTES stressed the importance of the initial and second periodic reports of Japan and the opening of a dialogue with the Committee. He wished to know whether NGOs had been involved in preparing the report and how the Japanese Government cooperated with NGOs active in the fight against racial discrimination.

39. What was the status of the Convention in the hierarchy of legal norms in Japan? He gathered from paragraph 5 of the report that a domestic law was not required for the Convention to be applicable, but sought clarification of the statement at the end of that paragraph to the effect that direct application was determined on a case-by-case basis, asking how that affected the Convention and whether individuals could invoke the Convention in Japanese courts. Was the phrase "in each specific case" a reference to the distinction often drawn in international law between provisions that were self-executing and those that were not? Which provisions were directly applicable, and which were not?

40. He, too, expressed doubts about Japan's compliance with article 4 (a) and (b) of the Convention. Japanese law apparently contained no specific provisions making the dissemination of ideas based on racial superiority or hatred or racist acts an offence, stipulating that racist motivation constituted an aggravating circumstance, or punishing racist organizations. The Japanese Government needed to review its legislation and introduce texts that were in compliance with article 4 of the Convention and the Committee's General Recommendation XV of 1993 (HRI/GEN/1/Rev.4), which stated that the prohibition of the dissemination of racist

ideas was compatible with the right to freedom of expression. A general principle prohibiting discrimination, as in article 14 of the Japanese Constitution, was insufficient; specific provisions were required making such discrimination a crime.

41. Turning to article 6 and the question of remedies for the victims of racial discrimination, the examples cited in paragraphs 150 and 162 were insufficient. To assess Japan's implementation of the Convention, the Committee needed to have complete statistics on complaints, prosecution and decisions for cases involving racial discrimination; the degree to which acts of racism were prosecuted was a test of a country's willingness to apply the Convention in everyday life.

42. Regarding the situation of vulnerable groups, the Committee attached great importance to economic and social indicators, such as unemployment, housing, access to social services, illiteracy, crime, alcoholism, drug addiction, prostitution and the prison rate of a given social group. Although the report contained information on the Ainu, saying that their situation had improved, paragraph 14 acknowledged that, in 1993, 17.4 per cent of the Ainu had reported having experienced discrimination. The Committee sought information on other indigenous peoples, such as the Okinawan, the Uilta and the Nivkh communities. The Buraku were widely reported by NGOs to be discriminated against in hiring, schooling, marriage and other areas. Such discrimination was based on descent and social class. Could the Japanese delegation provide information on the treatment of the Buraku?

43. Paragraph 51 recognized that there was still discrimination against members of the Korean community. The fact that many Koreans felt compelled to change their names was the sign of a violation of their sense of identity. NGOs had reported many cases of violence against Korean children and students, an inadequate response by the police, pressure to adopt Japanese names, especially when taking Japanese citizenship, and discrimination in hiring, access to social services and participation in local referendums. He asked the Japanese delegation to respond to those reports.

44. Paragraph 31acknowledged incidents of human rights violations against foreigners. The information provided by NGOs was even more disquieting. There had been reports of xenophobic attitudes in the media, which tended to exaggerate the crime rate among foreigners, discrimination in access to public facilities, domestic violence directed against Asian and South American women, exclusion of children of foreign immigrants from schooling, unusually long pre-trial detention for foreigners and violence against foreigners in police stations, prisons and immigration offices. Could the Japanese delegation comment on those assertions?

45. Mr. LECHUGA HEVIA referred first to Japan's reservation to article 4, which to a considerable extent invalidated one of the Convention's most important provisions. The so-called concept of freedom of expression made it possible for racist propaganda to appear in the press, and failure to punish racist organizations allowed them to continue their activities. Paragraph 61 of the report stated that, upon Japan's accession to the Convention, notice had been sent to all officials instructing them to implement that instrument, disseminate its content, give proper guidance and supervision and ensure that no discrimination took place. Had those instructions been complied with?

46. On the subject of the Koreans, the report stated that an agreement had been signed between Japan and the Republic of Korea on Koreans living in Japan. What was the status of people from the Democratic People's Republic of Korea? The case of the Okinawan minority gave cause for concern. How could the Japanese Government prevent acts of discrimination by United States troops against the Okinawan population? How far did its authority reach in preventing discrimination against that minority?

47. Mr. TANG Chengyuan said that the large, high-level delegation reflected the importance that the Japanese authorities attached to the implementation of the Convention. While he welcomed the enactment of the Law for the Promotion of the Ainu Culture in 1997, he noted that the Ainu people had suffered greatly in the past from the failure of the authorities to recognize their status as an ethnic minority. Had any steps been taken to compensate them?

48. Many Koreans who, for historical reasons, had been living in Japan for generations did not enjoy full civil and political rights. There were also reports of unfair treatment of Chinese and South American immigrants. For example, the criminal behaviour of one Chinese immigrant could not justify the public display of a poster urging people to report any sighting of a person who looked Chinese or spoke Chinese to the nearest police station. The periodic report failed to mention the case of returnees from China, i.e. Japanese who had lived in China during the Second World War and who had allegedly suffered considerable hardship on returning to Japan.

49. Japan's scientific and economic success and the resultant inflow of job-seekers had in some cases led to friction between the local population and foreigners. The problem could be addressed through a combination of legal and educational measures. Article 4 of the Convention required States parties to make acts of racial discrimination punishable by law. Japan's reservation on the grounds of freedom of expression was unsound because racist propaganda which caused personal injury to others had nothing to do with freedom of speech. Indeed such conduct was already punishable under the Japanese Penal Code. The hostile remarks by the Governor of Tokyo had led, for example, to the expulsion of foreign factory workers, causing both economic and moral damage to the victims. With regard to educational action, he welcomed the awareness-raising initiatives described in paragraphs 171 to 173 of the report. He feared, however, that a small minority of the Japanese population retained a strong sense of racial superiority, the mentality that had led to the subjugation of Asian peoples during the Second World War. Vigorous educational action was needed to promote respect for the principle of equal treatment for all, regardless of nationality.

50. Mr. PILLAI said that, according to the delegation, the Government had engaged in wide-ranging consultations when preparing its report to the Committee. He was therefore surprised at the discrepancy between the figures provided by NGOs and those contained in the report, and at the absence of any reference in the report to the Buraku people. As the issue of racial discrimination could not be effectively addressed unless accurate facts and figures were available, he urged the State party to ensure that the consultations on future reports were more exhaustive.

51. He hoped that the classification of foreigners on the basis of their residence status, as described in paragraph 21 of the report, was not conducive to discriminatory treatment. He was

concerned to note, for example, that Asians accounted for 91.6 per cent of the total number of registered foreigners in the "entertainer" category. He asked the delegation to explain the apparent contradiction between compulsory schooling and voluntary attendance by foreigners (para. 44).

52. With reference to article 4 of the Convention, he endorsed comments by other members of the Committee on the difference between freedom of expression and freedom to air views that advocated racial hatred. Racially discriminatory acts were described in paragraph 159 of the report as human rights infringements. Had the Council for Human Rights Promotion referred to in paragraph 168 any special responsibility to address such infringements?

53. As noted by previous speakers, discrimination based on descent was covered by the concept of racial discrimination under the Convention. In that connection, he invited the delegation to comment on the situation of the Buraku community.

54. Mr. THORNBERRY observed that the Sub-Commission on the Promotion and Protection of Human Rights had addressed the Buraku and analogous issues at its fifty-second session in 2000. Referring to paragraph 15 of the report concerning the Ainu people, he said that, however commendable welfare measures might be, they sometimes obscured real indigenous issues. He hoped that the cultural dimension of the Ainu question was taken into account. Although the term indigenous people had not been used in the report, the characteristics of the Ainu seemed to place them in that category. He therefore urged the State party to report on issues such as Ainu land rights, sacred sites, traditional knowledge and autonomous institutions in future reports. ILO Convention No. 169 could constitute a benchmark and source of inspiration in that regard, although Japan was not a party thereto.

55. With regard to the use by Koreans of Japanese names as a form of protection against discrimination, he stressed the importance of names in relation to identity. In terms of human rights jurisprudence, minority rights - and he would classify the Koreans as a minority - were quite extensive in respect of names and, for example, language of education. He therefore associated himself with Mr. Diaconu's comment on the need for bilingual education for Koreans. Noting the lack of appropriate legal structures in Japan to address racial discrimination, he questioned whether a programme for the elimination of discrimination could be implemented in practice without the requisite legislation and resulting case law.

56. Ms. JANUARY-BARDILL asked the delegation to explain why the Government had chosen not to conduct ethnically disaggregated population surveys. She was worried about the reference in paragraphs 17 and 18 of the report to the Ainu "problem". Viewing the Ainu people as a problem could distract attention from the real issues involved. Round tables on the Ainu should perhaps be supplemented by round tables on the dominant culture and the way in which it related to the minority group.

57. According to NGO reports, there was no legislation under which discriminatory practices in respect of access to public- and private-sector institutions could be prosecuted and there was no provision for punishment of offenders. Referring to paragraph 29 of the report, she asked for examples of cases in which discriminatory treatment of foreigners in terms of labour conditions had been prosecuted.

58. The report made no reference to gender-based acts of discrimination. She urged the State party to consult the Committee's General Recommendation XXV on gender-related dimensions of racial discrimination when preparing future reports. Korean women were reportedly often the targets of violence based on historical factors and suspicion of Korean nationals irrespective of their length of residence in Japan. What action was being taken to address the issue of human trafficking in women from countries such as Thailand, Colombia, China, the Republic of Korea and the Philippines and to punish those who abused the women? According to NGO reports, some 275,000 foreign wives of Japanese men who were registered as aliens were frequently subjected to domestic sexual violence and were exploited by their husbands. They were afraid to complain for fear of losing their immigration status and alienating their partners. If those allegations were true, they constituted a violation of article 5 of the Convention.

59. Mr. BOSSUYT said that the Ainu should be classified as an indigenous people and treated as such. He noted with surprise the statement in paragraph 21 of the report that only some 7.9 per cent of foreigners were allowed to work in Japan. How did the others manage to survive? According to paragraph 25, almost 300,000 foreigners were residing illegally in Japan. There were apparently plans to expel them from the country. Had such action already been taken and, if so, how many had been expelled and under what conditions?

60. Comparing the figures given in the table in paragraph 53 of the report for the number of applications for refugee status with those in his own country, he asked if the delegation could explain why the number was so small. Was it true that asylum-seekers whose cases were pending were not provided with any means of subsistence by the authorities?

61. Noting that there was no criminal offence of racial discrimination or of incitement to acts of racial hatred, he urged the State party to bring Japanese legislation into line with the Convention in that regard. Was he right in concluding from paragraph 154 of the report that there was no provision for judicial review of administrative decisions concerning immigration?

62. According to NGO reports, the Government intended to suspend in March 2002 the special measures that had been taken on behalf of the Buraku people in July 1969. Did the authorities consider that such action was justified under the circumstances?

63. He wished to know whether the Governor of Tokyo was appointed by the Government or elected. In conclusion, he observed that prisons in Japan were not overcrowded but the discipline imposed was allegedly extremely severe and took no account of cultural differences in the case of foreign prisoners, who suffered greatly under such a regime.

64. Mr. SHAHI strongly urged the State party to incorporate the Convention into Japanese domestic legislation so that appropriate punishments could be prescribed and provision made for remedies and compensation. He joined other members of the Committee in stressing that there was no contradiction between the prohibition of the dissemination of racist ideas and incitement to racial discrimination in the Convention and the right to free speech. Article 19, paragraph 3, of the International Covenant on Civil and Political Rights subjected the right to freedom of expression to certain restrictions.

The meeting rose at 6.10 p.m.

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Fifty-eighth session

SUMMARY RECORD OF THE 1444th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 9 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial and second periodic reports of Japan (continued) (CERD/C/350/Add.2)

1. At the invitation of the Chairman, the members of the delegation of Japan resumed their places at the Committee table.

2. Mr. ABOUL-NASR inquired why the Japanese authorities had waited over 20 years to ratify the International Convention on the Elimination of All Forms of Racial Discrimination.

3. The CHAIRMAN invited the Japanese delegation to answer all the questions asked by the members of the Committee.

4. Ms. OZAKI (Japan), referring to the participation of non-governmental organizations (NGOs) in the establishment of Japan's report, said that before drafting the report the Japanese Government had organized a meeting attended by the representatives of 10 ministries and 7 NGOs. The points of view of the Government and NGOs did not always converge and the NGOs were not always in agreement with each other, but in any event the Government consulted the NGOs and took account of their comments.

5. In answer to a question on the place of the Convention in the internal legal system, she said that the provisions of international treaties ratified by Japan had the same legal force as domestic legislation. To date, no doubt because the Convention had only recently been ratified, its provisions had not been invoked in the courts. In 1999, however, a district court hearing the case of the expulsion of a Brazilian had referred to the Convention in ruling that the expulsion was illegal and that damages should be paid to the victim. The question as to whether the Convention and other international treaties were directly applicable was settled on a case-by-case basis in the light of the scope of the provisions invoked. The Japanese Government considered that international treaties did not establish the rights of individuals directly but laid down obligations which were binding on the States that had ratified them. In that respect, it observed that article 9 of the Convention required States parties to adopt legislative, judicial, administrative or other measures which gave effect to the provisions of the Convention, but did not consider that the Convention could be directly invoked.

6. With regard to the ethnic make-up of the Japanese population, the Government did not have a statistical breakdown by ethnic origin, but it did have data gleaned from administrative documents. The number of foreigners residing in Japan had increased considerably in recent years. At the end of 1998, about 1.5 million foreigners had been registered with all the municipalities; the largest group had been Koreans (42.2 per cent of the total), followed by Chinese (18 per cent) and Brazilians (14.7 per cent).

7. Several questions had been asked on the Ainu people. According to a 1999 study, 23,760 Ainu were living on Hokkaido Island. That figure corresponded to persons residing on Hokkaido and defined as Ainu for the purpose of the study. It therefore did not

include Ainu not living on Hokkaido and not wishing to be recognized as Ainu. She did not know where the figure of 50,000 Ainu mentioned by Mr. Valencia Rodriguez came from and said that statistics on the topic were inevitably approximate.

8. In terms of the living standard of the Ainu, the report revealed that the ratio of Ainu receiving public assistance as compared to the rest of the population was decreasing. The percentage of Ainu youth going on to high school and post-secondary education was also given in the report. According to the most recent survey on discrimination, conducted in 1993, 12.4 per cent of those surveyed said they had experienced discrimination at school, on the job or in their private lives, and 15.7 per cent said that they knew of someone who had experienced such discrimination. The Constitution guaranteed the same rights for all. To the knowledge of the Japanese Government, there had been no cases in which Ainu movements or traditional activities had been restricted. However, to prevent and eliminate any form of discrimination, the human rights organs of the Ministry of Justice conducted public awareness campaigns to raise awareness of the fundamental rights of the Ainu. A brochure, entitled "The Ainu people and human rights", had been published and the slogan "deepen your understanding of the Ainu people" had been adopted to mark human rights week. Legislation had been adopted on the promotion of Ainu culture and tangible measures had been taken to encourage the development of the Ainu language and culture and to disseminate and promote knowledge of Ainu traditions. A number of events had been organized to that end (radio and television broadcasts, exhibitions, folktale competitions, etc.) and had received financial support from the relevant ministries.

9. The question of whether the Ainu should or should not be considered an indigenous people was a moot point, given that there was as yet no specific international definition of what constituted an indigenous people. In that respect, the law on the promotion of Ainu culture aimed to preserve and encourage Ainu language and culture and to ensure that society as a whole respected the existence of that people, but it did not promote the indigenous character of the Ainu. The living conditions of the Ainu were now much closer to those of the other inhabitants of Hokkaido, but the Government of Hokkaido prefecture was continuing its efforts to improve their living standard by implementing the fourth series of Hokkaido Utari Welfare Measures.

10. A question had been asked on groups of people such as the Nivkh living on Sakhalin Island. She had no details on the matter, but said that the traditions of the Nivkh and other peoples were given prominence in museums of ethnology. In any event, all persons living in Japan had equal rights. The Japanese Government had not ratified ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries because some of its provisions were incompatible with the country's legal system.

11. With regard to immigration, the fact of recognizing the right to free choice of employment and to equal pay for equal work did not mean that the State authorized anyone to enter the country and to engage in any occupation. As stated in paragraph 20 of the report, Japan had adopted a system of residence status as a basic framework for foreigners to enter and stay in Japan. There was no discrimination against foreigners, and a foreigner wishing to change occupation could change residence category. Foreigners had to register with the authorities of the municipality in which they were staying and their status differed depending on their occupation. Foreigners whose status allowed them to work belonged to an occupational

category. For example, the report stated that 91.6 per cent of all "entertainers" were from Asia. The criteria for acceptance of foreign workers in Japan were reviewed in accordance with changes in the economic and social situation. The presence of too many unskilled workers could have serious repercussions on Japanese society and undermine the national social consensus. Rather than accept foreign unskilled workers, the Japanese Government preferred to provide aid to countries - essentially those in the Asian region - which had a surplus of unskilled labour.

12. The Japanese Government was also engaged in the fight against illegal labour, especially since the number of foreign illegal workers was steadily growing. To prevent illegal labour, the authorities concerned, in cooperation with each other, gave guidance to employers, apprehended job brokers and members of organized crime rings and penalized unscrupulous employers who hired illegal workers.

13. With regard to racial discrimination against women, Japan had ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985 and had submitted several reports to the Committee monitoring the Convention's application. The Government was taking legislative and other measures to fight trafficking in women and pornography involving women and children and was making a serious effort to fight organized crime at the international level.

14. With regard to the human rights of foreigners in Japan, the services of the ministries concerned and the local authorities provided information in different forms to heighten the public's awareness of respect for the rights of foreigners. If cases arose in which foreigners were discriminated against, the authorities took the necessary measures.

15. Clarifications had been requested on the legal status and treatment of Korean residents. The matter was referred to in paragraphs 32 et seq. of the report and in the comments made at the previous meeting. Special laws governed control of immigrants who had lost Japanese nationality, and since 1991, the year in which a memorandum of understanding had been signed by the foreign ministers of both countries, the representatives of Japan and of the Republic of Korea had met from time to time to solve any problems that arose.

16. Amnesty International's statement on the treatment of foreigners in Japanese detention centres was indeed somewhat alarming, but it had to be emphasized that that NGO did not describe the situation as it was. In fact, everyone, whether Japanese or not, was dealt with according to the appropriate procedure on arrest. There had been no case of arbitrary detention or conviction in Japan. Detainees had sometimes been the victim of violence, but that violence was often a reaction by prison staff to the conduct of the detainees themselves. Disciplinary measures were nevertheless provided for in cases where prison staff members had used excessive and unjustified violence. Moreover, the rules governing the treatment of detainees had been amended in 1998 and there was no longer any reason to speak of discrimination in Japanese prisons.

17. A question had been asked about refugees, in particular those who had arrived from Indo-China since 1978. As stated in paragraph 52 of the report, all refugees were governed by the Immigration Control Act and could claim refugee status. The situation of refugees from

Indo-China was described in detail in paragraphs 54 et seq. of the report. At the end of December 2000, there had been 2,759 asylum-seekers, over 2,000 of whose requests for asylum had been granted.

18. The question had also been raised of compensation for the victims of discriminatory measures or acts. When a person was the victim of discrimination at the hands of a public official acting in the performance of his duties, the local community concerned or the State was obliged to pay compensation. In addition to the measures spelled out in paragraphs 155 et seq. of the report, many offices in charge of legal affairs and the defence of civil liberties in the country frequently coordinated their activities and had thus been able in particular to order the removal of posters calling for the expulsion of a certain foreign community.

19. With regard to the criminalization of discrimination, she recalled and expanded on what was said in paragraphs 146 et seq. of the report, mentioning in particular article 90 of the Civil Code, which provided for compensation for damage caused to the victims of racial discrimination. Moreover, even if the offence of racial discrimination was not stipulated in the Penal Code, a prosecutor could bring criminal proceedings if he considered that an act of racial discrimination constituted a criminal offence. In that respect, the absence of penal provisions criminalizing racial discrimination was in keeping with the principle that had prompted Japan to issue a reservation concerning article 4 of the Convention. Given that the Constitution guaranteed freedom of expression, Japan discharged its obligations under article 4 in general terms, but the application of paragraphs (a) and (b) of that article could lead it to prohibit all sorts of activities and therefore no longer to respect certain constitutional guarantees. The dissemination of racist ideas was punishable only if it infringed on the honour of a person or a group, and there had been no cases of incitement to discrimination in Japan requiring the enactment of legislation that could limit freedom of expression.

20. Questions had been raised about alleged acts of discrimination against Korean children at school. The Committee was assured that, in cooperation with the schools, the authorities concerned were dealing with cases of harassment at school, essentially by educating young people rather than by punishment. There had been three arrests in 1994, and since 1998 the authorities had unfortunately had to deal with six cases of discrimination at school without being able to arrest the wrongdoers.

21. With regard to legislation, the Constitution guaranteed freedom of assembly and freedom of expression, the basis in Japan on which the population took part in political activities and the essential guarantee of rights and freedoms. Legislators had therefore avoided sweeping restrictions that would prevent the exchange of opinions. In Japan, awareness and persuasion were considered preferable to repression. There was no legislative provision specifically prohibiting groups that incited to racial discrimination: it was deemed sufficient to apply existing legislation. With regard to the dissemination of exhortations to discrimination over the Internet, guidelines had been issued to all service providers.

22. As had been pointed out by certain members of the Committee, the constitutional provision concerning the right to vote and to be elected did not apply to foreigners, but could not be said to be discriminatory. Moreover, article 92, paragraph 2, of the Constitution provided that permanent residents could elect local representatives. In 1995 the Supreme Court had ruled that

that provision could not be interpreted as indicating that foreigners had the right to vote, but in October 1998 it had declared that legislation giving the right to vote to permanent residents could be considered and since then proposals had been submitted to that end by several political parties.

23. In answer to questions concerning the right of return, she stated that all Japanese naturally had the right to return to Japan and that any person able to prove that he or she was Japanese was authorized to return under article 63 of the Immigration Control Act. Foreigners living in Japan did not have an automatic right of return once they left the country, as the State could carry out a number of checks before giving its authorization.

24. In reply to questions about discrimination in employment, she stated that labour legislation prohibited all discrimination, in particular with regard to pay or working hours, on the basis of the employee's nationality or opinion. In the event of an infringement, the employer was asked to correct the situation and provide working conditions in keeping with the law, which also applied to foreign workers. There had been specific cases of discriminatory words being spoken on the job and the scope of the Convention had been explained to the wrongdoers so that they would mend their ways.

25. With regard to housing, since 1992 legislation guaranteed that foreigners residing legally in Japan were treated on an equal footing with Japanese with regard to the attribution of public housing, and since then the number of foreigners occupying such units had increased greatly. The matter was therefore not a problem, nor did permanent foreign residents have problems in terms of protection of their social rights, which were the same as for the Japanese and therefore did not require any specific measures.

26. Regarding the application of article 6 of the Convention, in particular the remedies available to foreigners in case of racial discrimination, when persons benefiting from social welfare asked for legal aid, they were exempted from paying the costs incurred. In investigations into human rights violations, the perpetrators often confessed, but since that was not always the case, procedures aimed at making them acknowledge what they had done had been established and would be strengthened.

27. Members of the Committee had asked what was done to familiarize the circles concerned with the content and scope of the Convention. She stated that, for example, the comments made by the Committee after its consideration of the report would be published, including on the Internet. Human rights training, comprising the study of the Convention, was given to judicial staff, police officers and all civil servants.

28. The Committee had pointed out that the case of the Buraku population was not covered in the report. That was because the word "descent", used in article 1, paragraph 1, of the Convention, did not mean the same thing to the authors of the Convention as it did to Japan. For the former, the word covered ethnicity, skin colour and race, but in fact it was not really defined in the Convention and did not cover the social class of the persons concerned. Japan considered that, historically, the Buraku were a class defined by a very specific occupation and governed by a special status, which indeed could be considered as a form of discrimination. The population of Okinawa, for its part, had a very specific culture that had developed on the island over time,

but was Japanese and hence protected like all others by the country's laws and institutions. It was true that the stationing of American armed forces placed a heavy burden on the population, but Japan was endeavouring to lighten that burden by agreeing with the United States on the means of improving relations between the two communities.

29. With regard to the situation of people who had recently returned from China, in particular orphans, those people had been born in China to Japanese parents who had lived there for many years and who therefore were not covered by the Convention. They had been offered compensation on their return and the Government planned to increase the social welfare benefits granted them.

30. She mentioned the matter of the controversial statement of the Governor of Tokyo, specifying, as he himself had indicated during a subsequent press conference, that he had had absolutely no intention of promoting or encouraging racial discrimination but had merely declared that certain foreigners entering Japan illegally were the authors of violent crimes that could sometimes lead to major disturbances. The Governor of Tokyo had subsequently published an article stating that he encouraged all measures allowing for the elimination of discrimination against foreigners and declaring his commitment to human rights.

31. In answer to a question by Mr. Tang concerning a brochure distributed by the Japanese police recommending that anyone suspecting a Chinese person of breaking the law denounce that person immediately to the police, she admitted that the content of the brochure was inappropriate and added that the police had issued a public apology and withdrawn the brochure from circulation. The Government stood ready to give detailed and in-depth instructions to prevent any similar incident in future. She concluded by stating that the Japanese delegation would forward written answers to the Committee on the questions to which it had not been possible to reply, for lack of time, at the current session.

32. Mr. YUTZIS said that the initial report was of a high standard and broached numerous issues of importance to the Committee. With regard to the substance, he stated that article 4 of the Convention was of a mandatory character and that the preventive measures listed in it were of the utmost importance. Both history and social and cultural anthropology had taught that the dissemination of ideas based on racist positions could very rapidly have extremely grave consequences, hence the importance of prevention. In his public statement, the Governor of Tokyo had used very derogatory terms to describe foreigners, which was regrettable, even if Japan was not an isolated case in that respect. The dissemination of racist ideas was one of the chief causes of infringement of freedom of expression and any person infringing on the rights of a group undermined that group's freedom of expression. It was therefore mistaken to claim that taking measures against racist organizations was tantamount to limiting their freedom of expression. The exact opposite was true.

33. On the issue of violence, he was very concerned by paragraph 89 of the State party's report, which read that "no provision exists in Japan under the present legal system that would prohibit specific organizations or activities from promoting racial discrimination or incitement, or which would punish participation in such organizations". That was worrying because it meant that in practice article 4 of the Convention was not respected in Japan. Paragraph 89

continued, "if an organization promoting or inciting racial discrimination engages in violent, destructive activities contrary to the Subversive Activities Prevention Law, in accordance with that Law, under certain conditions, its activities may be restricted, its dissolution ordered, or it or its members punished". The Japanese authorities therefore apparently considered that an act of violence could only concern terrorist activities or physical injury. A text based on non-recognition of other people by their social exclusion could have a far more serious impact than an act of physical violence itself. He asked the delegation to provide further information on that point.

34. With regard to the issue of descent, article 1 of the Convention established that racial discrimination referred to any distinction "based on race, colour, descent or national or ethnic origin", meaning that descent could also be grounds for discrimination and that the State party was obliged to guarantee that there was no discrimination based on descent.

35. Referring to the Convention's effects in internal law, Mr. de GOUTTES noted that the delegation had quite rightly stated that the Convention's provisions were not self-executing in Japanese law. Since national legislation had to be adopted to implement the Convention, it was all the more necessary to enact appropriate legislation to criminalize all acts of racial discrimination, in compliance with articles 4 and 5 and paragraph 1 (c) of article 2 of the Convention.

36. In fighting racial discrimination, it was not enough to mobilize citizens, no matter the extent of that mobilization, and legislation was required both to punish offences and to prevent them. Although there might be no racial discrimination in Japan at present, that did not mean that the phenomenon could not emerge in the future, in particular since, according to the delegation, the number of foreigners entering the country had increased considerably.

37. Furthermore, the debate on the contrast between countries with a monist legal system, in which international treaties and agreement took precedence over domestic legislation as soon as they had been approved, and those with a dualist legal system was perhaps not the most consequential. It was more important to know whether a duly ratified instrument was self-executing. Even in the case of a monist system, any ratified international treaty had to be accompanied by internal legislation defining the sanctions and penalties incurred for any derogation from the obligations arising therefrom. Indeed, since no human rights treaty provided for punishment in the event of non-compliance with its provisions, implementing regulations were absolutely necessary to ensure its application. He therefore recommended that Japan supplement its legislation in order fully to comply with the obligations arising from article 4 of the Convention.

38. Mr. THORNBERRY said that the State party should seriously consider ratifying ILO Convention No. 169, which served as a model for what should be practice in the area of the rights of indigenous peoples. Convention No. 169 contained a clause providing that the Convention should be interpreted in a flexible manner, having regard to the conditions characteristic of each State party. He invited the Japanese Government to familiarize itself with General Recommendation XIII of the Committee on the rights of indigenous peoples.

39. The Japanese delegation had stated that there was no definition in international law of indigenous peoples, but he considered that the State party was not thereby released from its international obligations in that respect, since the existence of those peoples was a matter of fact, no matter how the notion was interpreted. With regard to the comments regarding discrimination against the Buraku on the grounds of their descent, he stated that the expression "racial discrimination" used in article 1 of the Convention covered different categories of discrimination, including that based on descent, in order to cover all cases and to apply to all countries no matter their specific cultural characteristics. In that respect, he drew the Japanese delegation's attention to resolution 2000/4 of the Sub-Commission on the Promotion and Protection of Human Rights, declaring that discrimination based on employment and descent was a form of discrimination prohibited by international human rights standards.

40. Mr. DIACONU endorsed Mr. Thornberry's statement and added that States should not consider indigenous peoples as a source of problems but as a cultural asset to be protected. Furthermore, according to the information provided by the delegation, to be considered discriminatory under the Japanese Civil Code, an act not only had to be discriminatory as such, but also had to run counter to law and order and morality, a condition not mentioned anywhere in the Convention. Given the absence of penal legislation specifically criminalizing the acts covered by article 4 of the Convention, he asked whether the Constitution provided for penalties that would make up for that shortcoming. The State party had a responsibility to fight discrimination and should review its legislative and institutional framework with a view to bringing it in line with the Convention. That task was all the more necessary in that population movements around the globe and demographic change would lead Japanese society to receive a growing number of foreigners in the future.

41. He disagreed with the delegation's position that a declaration under article 14 of the Convention would threaten the independence of the Japanese court system. The procedure for examining communications was not a substitute for national court procedures since it could not be initiated until all internal remedies had been exhausted. Lastly, he invited the Japanese Government to reconsider its position and approve, as soon as possible, the proposed amendment to article 8 of the Convention on the financing of the emoluments of the Committee members, recalling that that amendment had already been approved by the General Assembly.

42. The CHAIRMAN invited the Japanese delegation to respond to the final questions from Committee members.

43. Mr. KATAGIRI (Japan) said that, given the limited time available for his oral presentation on education, the Government would provide detailed written answers to the additional questions raised by Committee members.

44. Mr. SHIBUYA (Japan) said that Japan's reservations to article 4 of the Convention did not mean that in Japan racist behaviour was not penalized by the law. Racially motivated oral or physical violence was punishable under the Penal Code, and, generally speaking, the fact that an act of violence was racially motivated constituted an aggravating circumstance in Japanese penal law. In addition, the propagation of racist ideas and incitement to racial hatred and the creation

of associations promoting such ideas constituted acts of racial discrimination that were subject to penal provisions without those provisions being considered as excessively restricting the freedom of expression guaranteed by the Constitution.

45. Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) expressed satisfaction at the frank and constructive dialogue initiated between the Japanese delegation and the Committee and the many replies provided to Committee members' questions. In Japan, the provisions of the Convention took precedence over those of internal law and applied to acts of racial discrimination, even though they were not self-executing. The Committee had nevertheless noted, with regard to article 2 of the Convention, that there was no legislation specifically prohibiting racial discrimination in the State party and had underscored, when considering the application of article 4, the mandatory character of that article. Recalling General Recommendation XV on article 4, according to which the prohibition of the dissemination of all ideas based upon racial superiority or hatred was compatible with the right to freedom of opinion and expression, the Committee had asked the State party to withdraw its reservation to article 4. It had also expressed concern at the xenophobic declarations made by the Governor of the city of Tokyo.

46. The Committee had considered the situation of Japan's indigenous peoples, underscoring the importance of recognition of the Ainu as an indigenous people, and had suggested that the State party consider ratifying ILO Convention No. 169. While acknowledging the efforts made by the State party, the Committee had noted the persistence of a discriminatory attitude in Japan towards indigenous peoples, Koreans, foreigners, refugees, illegal immigrant workers, the Buraku and the inhabitants of the island of Okinawa. It had stressed the need for complete statistics on the legal cases concerning minority groups. Lastly, the Committee had expressed the wish that the State party should make a declaration under article 14 of the Convention.

47. Mr. HARAGUCHI (Japan) thanked the Committee and the Rapporteur for their valuable comments on Japan's report. Differences of views had emerged between the Committee and his delegation on certain major issues, but the fruitful dialogue established had provided the delegation with food for thought. He assured the Committee that the Japanese Government would pursue its fight against human rights violations and, in particular, against racial discrimination.

48. The CHAIRMAN regretted the serious time constraints imposed on the Japanese delegation. He nevertheless expressed satisfaction at the establishment of an open and constructive dialogue. He declared that the Committee had completed its consideration of the initial and second periodic reports of Japan.

The meeting rose at 1 p.m.